

WATER QUALITY RENEWAL ACT OF 1985

JULY 2, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOWARD, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

SUPPLEMENTAL VIEWS

[To accompany H.R. 8]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 8) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

INTRODUCTION

The existing Water Pollution Control Program stems from the complete rewrite of prior water pollution control laws which was incorporated in the Federal Water Pollution Control Act Amendments of 1972. The 1972 Act established as goals the reduction and ultimately the elimination of discharges of pollutants from municipal sewage systems and industrial plants. An interim goal of July 1, 1983, was established to achieve, wherever attainable, fishable and swimmable water quality in all of the rivers, lakes and streams of the Nation.

The 1972 Act established two primary mechanisms for the accomplishment of these goals. First, all industrial and municipal dis-

chargers were required to treat their wastes to clearly definable minimal levels based on best practicable and best available technologies. Beyond those minimum levels, dischargers were required to comply with any more stringent state or Federal requirements based on receiving water quality standards. These requirements were to be enforced nationwide through permits required for every point source discharging into navigable waters.

The technology-based minimum treatment requirements were to be imposed in increasingly stringent steps. For industries, effluent limitations reflecting application of the best practicable control technology currently available were to be achieved by 1977. The corresponding 1977 effluent limitation for municipalities was secondary treatment. By 1983, industries were to achieve effluent limitations corresponding to the best available technology economically achievable.

The second mechanism was a significantly strengthened program of grant assistance to municipalities for the construction of sewage treatment facilities to meet the requirements of the Act. The Federal share of eligible project costs was raised to 75 percent and \$20.75 billion was authorized for grants, including reimbursement grants, for the construction of treatment facilities under the new law.

These two fundamental concepts have remained essentially the same since the 1972 Act, although there have been several additional amendments. The first of the important changes in the law was enacted in 1977. This was the "mid-course corrections" which had been contemplated since 1972. The 1977 amendments authorized an additional \$25.5 billion for the Construction Grants Program. In addition, they established a program for encouraging innovative and alternative approaches to wastewater treatment and initiated a mechanism for turning over more of the management of the grants program to the states. The 1977 Act also placed greater emphasis on the control of toxic pollutants and imposed new dates of required best available technology and best conventional technology compliance for toxic pollutants, conventional pollutants, and other pollutants which fell into neither of these categories. For all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the Committee on Public Works and Transportation of the House of Representatives (the so-called priority pollutants), the compliance date was set at not later than July 1, 1984. For all toxic pollutants listed pursuant to the provisions of section 307(a) of the Act, compliance with effluent limitations was required not later than three years after the date of establishment of the effluent limitations. For conventional pollutants, the compliance date was set at not later than July 1, 1984. For other pollutants which fall neither within the conventional or toxic categories, the compliance date was set at not later than three years after the date of the establishment of effluent limitations, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

The other significant changes to the 1972 Act occurred in the 1981 amendments, which related primarily to the Construction Grants Program. In the 1981 Act, the Federal share was reduced from 75 to 55 percent beginning in fiscal year 1985. In addition, eligible categories for grant assistance were limited to treatment

works, associated interceptor sewers and correction of inflow-infiltration problems also beginning in fiscal year 1985. Other items such as problems associated with combined overflows and construction and repair of collector sewers, were eliminated from grant eligibility. This was tempered somewhat by a provision which allowed grants to be made for these otherwise ineligible categories in an amount not to exceed 20 percent of a State's allotment as determined by the Governor. Also, grants for planning and design were eliminated and replaced by a provision which provided for an allowance for planning and design costs when a step three construction grant was approved. In order to preserve some continuity in the program, the new provisions with regard to the amount of the Federal grant share were not made applicable to projects which received construction grants prior to the end of fiscal year 1984, but only for the new eligible categories.

The 1972 Act has resulted in significant improvement in the control of discharges of pollutants into the Nation's waters. Studies indicate that at the very least, pollution loads have not increased even though substantial increases in population and industrial discharges have occurred. However, the program has not performed as well as expected due primarily to uncertainties in funding, insufficient levels of funding, and delays in promulgation of effluent standards for industrial dischargers.

H.R. 8, as reported by the Committee, is designed to correct difficulties existing with regard to the program and to significantly improve the effectiveness of the water pollution control program. The bill provides for a five-year extension of the authorization for construction grants, a separate grant system to enable states to establish revolving funds to assist communities within the state in constructing needed sewage treatment facilities, reinstatement of combined sewer overflow projects as an eligible category for grant assistance, and the extension of compliance dates for the achievement of best available technology and best conventional technology, to reflect the delays which have occurred in the promulgation of the effluent limitations.

"The Assessment of Needed Publicly Owned Wastewater Treatment Facilities in the United States," commonly referred to as the 1984 Needs Survey, was submitted by Congress in February 1985. This survey, which is a joint effort of E.P.A. and the states, estimates the investment required to meet both 1984 and year 2000 sewage treatment needs.

The 1984 survey estimates that a total investment of \$101.7 billion will be required to construct municipal water pollution control facilities eligible for Federal financial assistance under the Federal Water Pollution Control Act. This estimate includes \$40.6 billion to construct primary, secondary and advanced treatment plants for the current population and \$12.5 billion for these measures to address the population growth expected to occur between 1984 and 2000. These sums reflect the limitation on reserve capacity contained in the 1981 amendments which set the 1990 population level as the maximum level for which Federal financial assistance will be available.

Also included are other categories of municipal pollution control components consisting of replacement and rehabilitation of existing

sewers, construction of new collector sewers and correction of combined sewer overflows. These categories are not generally eligible for construction grant assistance under the 1981 amendments but assistance can be made available for them at the discretion of a Governor up to a limit of 20 percent of the state's amount. The estimates for these categories are \$44.4 billion for the current 1984 population and an additional \$4.2 billion to meet the needs of expected population growth through the year 2000.

The Environmental Protection Agency in the 1984 Needs Survey estimates that meeting all eligible needs would result in a potential future Federal investment of approximately \$35.8 billion.

H.R. 8 authorizes a total of construction grant funds of \$12 billion through fiscal year 1990. In addition, it authorizes a total of \$9 billion in grants to states for the establishment of state revolving funds to assist municipalities in the construction of needed water pollution control facilities. This constitutes through fiscal year 1994 \$23 billion in Federal financial assistance as compared to a needed Federal investment of approximately \$35.8 billion.

The Committee expects that the \$9 billion in Federal assistance for the establishment of state revolving funds will result in the construction of substantially more pollution control facilities than would \$9 billion in construction grant funds.

Section 30 of H.R. 8 required the Administrator to submit to Congress by February 10, 1990, a report on the financial status and operations of water pollution control revolving funds established by the states. In addition, section 16 which established the revolving fund program requires each state to annually make a full and complete report to the Administrator concerning the use of funds in the revolving fund and requires the Administrator on an annual basis to conduct or require states to conduct independent reviews and audits.

The Committee is hopeful that the state revolving funds together with the construction grant authorizations will enable municipal water pollution control needs to be met within a reasonable time. The Committee intends, however, to very carefully monitor the progress of the states in order to determine whether any changes need to be made in order to insure that the goals of the Act are met insofar as they apply to municipal facilities.

Section 316(a) of the Federal Water Pollution Control Act authorizes a thermal discharge limitation less stringent than the limitation proposed for a facility if the lesser standard assures "a balanced, indigenous population of shellfish, fish and wildlife" in the affected body of water.

H.R. 8 does not modify section 316(a). It has been suggested, however, that the statute could be interpreted to contradict Congress' intent. A case in point is New Jersey Central Power and Light Company's Oyster Creek Nuclear Generating Station in Ocean County, New Jersey. The Committee understands that prior to the plant's construction the stream which serves as its discharge canal was a low flow, brackish creek. Water quality and aquatic life productivity were both poor. Fish would not reproduce in the creek and mortality rates were high.

In constructing the plant the stream was dredged and modified extensively. This permanently changed the salinity and tempera-

ture of the stream. Unlike its historic character, the stream now has a thriving, diverse fish and shellfish community. Nevertheless, it has been suggested that this community is not "indigenous" under section 316(a), and the plant, therefore, is ineligible for a variance under the statute.

The Committee does not agree with that suggestion. The Committee believes that a thermal discharge variance under the statute is fully consistent with the conditions noted in the example described above.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE, DEFINITION OF ADMINISTRATOR

Section 1 provides that this Act may be cited as the Water Quality Renewal Act of 1985. It also provides that the term "Administrator" refers to the Administrator of the Environmental Protection Agency.

SECTION 2—AUTHORIZATIONS OF APPROPRIATIONS

This section continues through Fiscal Year 1990 authorizations for a number of programs in the Water Pollution Control Act as follows:

- \$22,770,000 per fiscal year for research activities and investigations on the causes and effects of water pollution.
- \$3 million per fiscal year for the training of personnel who operate and maintain treatment plants.
- \$1,500,000 per fiscal year for forecasting the supply of and demand for occupational categories needed in the water pollution control field.
- \$75 million per fiscal year for grants to state and interstate agencies to assist in administering programs for water pollution control.
- \$7 million per fiscal year for grants to educational institutions for programs to train personnel in the operation of water pollution control facilities and to provide scholarships for students entering the field of operation and maintenance of publicly owned treatment works.
- \$50 million per fiscal year for grants under section 208 for developing and implementing areawide waste treatment management planning processes.
- \$50 million per fiscal year for the rural clean water program.
- \$50 million per fiscal year to implement interagency agreements for the utilization of other Federal laws to assist in controlling water pollution.
- \$30 million per fiscal year for the Clean Lakes Program, which provides for the restoration of the quality of water in lakes.
- \$110 million per fiscal year for general administration of the Federal Water Pollution Control Act by the Environmental Protection Agency.

SECTION 3—AUTHORIZATIONS FOR CONSTRUCTION GRANTS

This section extends the authorization level for the Construction Grants Program of \$2.4 billion per fiscal year through fiscal year 1990.

SECTION 4—COMPLIANCE DEADLINES

This section extends the compliance dates for achievement of best available technology and best conventional technology.

Subsection (a) of section 4 extends the compliance date for all toxic pollutants referred to in Table 1 of Committee Print 95-30 of the House Committee on Public Works and Transportation (the priority pollutants). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date such effluent limitations are established.

Subsection (b) of section 4 extends the compliance date for all other toxic pollutants which may be listed under Section 307(a). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date of establishment of any applicable effluent limitations.

Subsection (c) of section 4 extends the compliance date for application of best conventional technology (for conventional pollutants—biological oxygen demand, fecal coliform, suspended solids and pH). Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the establishment of applicable effluent limitations.

Subsection (d) of section 4 extends the requirement for best available technology for all other pollutants. Compliance is to be as expeditiously as possible, but in no case later than three years and six months after the date the effluent limitations are established.

Subsection (e) of section 4 requires the Administrator of the Environmental Protection Agency to promulgate final regulations establishing effluent limitations for direct dischargers and limitations requiring pretreatment for all of the toxic pollutants referred to in Table I of Committee Print 95-30 in accordance with the following schedule:

Foundries.....	June 30, 1985.
Nonferrous metals forming.....	June 30, 1985.
Organic chemicals and plastics and synthetic fibers	March 31, 1986.
Pesticides	August 31, 1985.
Nonferrous metals (phase II)	July 31, 1985.

SECTION 5—INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS

This section provides for the development and implementation of individual control strategies to achieve compliance with applicable water quality standards where it is determined that such compliance will not result from the application of best available technology and best conventional technology.

Subsection (a) requires each state, not later than one year after the date of enactment of this legislation, to submit to the Administrator a list of all navigable waters in such state for which the

state does not expect the applicable water quality standard to be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of toxic pollutants listed pursuant to section 307(a). For each segment of the waters included on this list, the state is to determine the specific point sources discharging toxic pollutants which are believed to be preventing or impairing such water quality, and the amount of each toxic pollutant discharged by each source. The state submission is to also include an individual control strategy, which the state determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the state, through the establishment of effluent limitations and water quality standards. The State's proposed reduction in toxic discharges must be sufficient, in combination with other controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of the strategy.

Not later than 120 days after the last day of the one-year submittal period, the Administrator shall approve or disapprove the control strategies submitted by a state.

If a state fails to submit control strategies or the Administrator does not approve the control strategies submitted by a state, then, not later than one year after the last day of the submittal period the Administrator, in cooperation with the state and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in the state for which the Administrator does not expect the applicable water quality standard will be achieved after the requirements for best available technology and best conventional technology are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on the list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after the last day of the submittal period.

Not later than one year after the date of publication of the required list, the Administrator, in cooperation with the states, shall issue proposed regulations setting forth, for each segment of the navigable waters listed, an individual control strategy. Each individual control strategy shall produce a reduction in the discharge of toxic pollutants from point sources identified by the Administrator through the establishment of effluent limitations and water quality standards which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of the Act.

Subsection (b) amends the citizen suits provision of section 509 of the Act to allow interested persons to bring a legal action for review of the Administrator's promulgation of individual control strategies under section 5.

SECTION 6—POLICY FOR CONTROL OF NONPOINT SOURCES OF POLLUTION

Section 6 adds to section 101(a) of the Federal Water Pollution Control Act the statement that it is the national policy that plans for the control of nonpoint source pollution be developed and implemented in an expeditious manner, so as to enable the goals of the Act to be met through the control of both point and nonpoint sources of pollution. The intent of this section is to emphasize the importance of controlling nonpoint sources of pollution, together with point sources, so as to achieve the water quality goals of the Act.

SECTION 7—CONTROL OF NONPOINT SOURCES OF POLLUTION

This section adds a new section 319 to Title III of the Federal Water Pollution Control Act, to provide for nonpoint source control implementation programs.

Subsection (a) of new section 319 provides that the Governor of each state shall prepare and submit to the Administrator for his approval a report which:

- identifies those portions of the navigable waters within the state which, as a result of pollution from nonpoint sources in whole or in part, are not meeting applicable water quality standards or the goals or requirements of the Act;
- identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under the preceding provision, in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
- identifies and describes state and local programs for controlling pollution added from nonpoint sources to and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance;
- describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control nonpoint sources of pollution.

Subsection (b) of new section 319 provides that the Governor of each state shall prepare and submit to the Administrator for his approval:

- a plan which the state proposes to implement, in the first four fiscal years beginning after the date of submission of the plan, for controlling pollution from nonpoint sources;
- a report which identifies each department, agency, or instrumentality of the United States, and each department, agency,

or instrumentality of the state, which is likely to be engaging in, supporting or providing financial assistance for any activity or program in the state which, if carried out, would be inconsistent with implementation of the state's plan for controlling nonpoint sources. This report is to recommend to the Administrator methods by which each Federal department, agency or instrumentality could modify such activity or program and methods by which the state intends to modify administration of its activity or program so that the activity or program is consistent with and assists the state in implementation of its plan for control of nonpoint sources.

Each plan proposed for implementation must specify:

- for those portions of navigable waters significantly affected by nonpoint pollution, the particular portion of navigable waters and the land area contributing such pollution with respect to which the state plans to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of the plan;
- the order in which, and the schedule under which, the state plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;
- the categories and subcategories of nonpoint sources of pollution with respect to which the state plans to assist, encourage, or require implementation of such practices and measures;
- the best management practices and measures, the implementation of which the state plans to assist, encourage, or require;
- the methods by category and subcategory of sources of pollution which the state plans to use to assist, encourage, or require;
- the methods by category and subcategory of sources of pollution, which the state plans to use to assist, encourage, or require implementation of such practices and measures; and
- sources of Federal and other assistance which will be available for supporting implementation of such practices and measures for which the assistance will be used in each of the fiscal years.

Each plan submitted by a state under this subsection shall be accompanied by a certification of the Attorney General of the State, or the chief attorney of any state water pollution control agency, that the laws of the state provide adequate authority to implement the plan or, if adequate authority does not exist, a list of the additional authority which will be necessary to implement the plan.

The implementation schedule must establish for each category and subcategory of nonpoint sources of pollution an expeditious period for implementation of best management practices and measures and shall include the estimated dates for implementation of these practices and measures.

In developing and implementing a plan under this section, a state is required, to the maximum extent practicable, to utilize local, public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

The states are directed, to the maximum extent practicable, to develop and implement nonpoint source control plans on a watershed-by-watershed basis.

Subsection (c) of new section 319 requires that any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional and interstate agencies, and shall be submitted to the Administrator during the 270-day period beginning on the date of enactment of this legislation, except that, upon request of the governor, the Administrator shall extend this period for not to exceed an additional 270 days.

If the governor of a state does not submit the report required by subsection (a) during such period (the report describing nonpoint source problems in state waters and existing state programs and practices), the Administrator is to prepare the report for the state.

Subsection (d) of new section 319 directs the Administrator to consolidate recommendations for modifications of activities and programs of the Federal Government submitted by the states and submit these consolidated recommendations to the appropriate departments, agencies and instrumentalities of the United States. Each such department, agency or instrumentality, to the maximum extent practicable and consistent with existing law, must accommodate these recommendations and carry out its own activities and programs in a manner which is consistent with and will assist implementation of the state's nonpoint source pollution control plan.

Subsection (e) of new section 319 provides that, subject to paragraph 2, not later than 180 days after the date of submission of any report or plan under this section, the Administrator shall either approve or disapprove the report or plan, as the case may be. The Administrator may also approve or disapprove a portion of a plan. If the Administrator does not disapprove a report, a plan, or a portion of a plan, in the 180-day period, it is deemed approved. Paragraph 2 provides that if, after notice and opportunity for public comment and consultation with appropriate Federal and state agencies, the Administrator determines that the state plan or any portion of it is not likely to satisfy the goals of requirements of the Federal Water Pollution Control Act, that adequate authority does not exist or adequate resources are not available to implement the plan, or that the plan is not adequate to improve the quality of waters in the state, the Administrator shall disapprove the plan or a portion of the plan with respect to which the Administrator makes his determination. The Administrator must notify the state of any disapproval and request specific revisions of the plan or portion of the plan necessary to obtain approval. Not later than 90 days after the date of this notification, the state must submit its revised plan to the Administrator for his approval.

Subsection (f) of new section 319 provides that, if a state fails to submit a plan or the Administrator does not approve a plan for the control of nonpoint sources of pollution, a local agency or organization which has expertise in, and authority to, control pollution resulting from nonpoint sources in any area of the state which the Administrator determines is of sufficient geographic size, may, with the approval of the state, request the Administrator to provide technical assistance to it in developing for such area a nonpoint source pollution control plan. The agency or organization must submit its plan to the Administrator for his approval. If the Administrator approves the plan, the agency or organization shall

be eligible to receive financial assistance for implementation of the plan upon the same terms and conditions as assistance provided to a state.

Subsection (g) of new section 319 provides that, upon request of the state, the Administrator may provide technical assistance to the state in developing a nonpoint source pollution control plan.

Subsection (h) of new section 319 provides that, if any portion of the waters in a state which is implementing a plan approved under this section is not meeting applicable water quality standards because of pollution from nonpoint sources in another state, the state may petition the Administrator to convene, and the Administrator shall convene, a management conference of all states which contribute pollution resulting from nonpoint sources. If, on the basis of information available to him, the Administrator determines that a state is not meeting applicable water quality standards because of pollution from nonpoint sources from another state, the Administrator shall notify the states. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification whether or not the state requests the conference. The purpose of the conference is to develop agreement among the states to reduce the level of pollution.

A state contributing significant pollution from nonpoint sources to another state must submit to the Administrator for his approval a nonpoint source pollution control plan to reduce the level of pollution, or, if it has an approved plan, the state must revise the plan to reduce the level of pollution entering the other state.

Subsection (i) of new section 319 provides for grants to states with approved plans for the purpose of assisting the states in implementing the plans. The Federal share of the cost of the plan shall not exceed 30 percent of the cost incurred by the states. However, where the Administrator determines that a significant number of non-Federal, non-state interests in a watershed area are willing and able to enter into agreements to participate in nonpoint source pollution control measures, the grant shall be not less than 50 percent and not more than 60 percent. This bonus grant—of up to 10 percent—is intended to provide a greater incentive for individuals and local organizations to work together to solve nonpoint source pollution problems. The phrase “significant number of interests” is intended to provide the administrators of this program with the flexibility to include landowners, farmers, conservation districts, national resource districts, or other suitable regional non-governmental organizations which may be functioning within a watershed, regardless of the size of the interest.

The state must enter into agreements with the Administrator of the Environmental Protection Agency to assure that the state will maintain its aggregate expenditures for programs for controlling pollution added to the navigable waters in the state from nonpoint sources and for improving the quality of waters in the state from nonpoint sources and for improving the quality of waters at or above the average level of such state expenditures in the two fiscal years preceding the date of enactment of this subsection.

Each state which receives a grant under this section must submit to the Administrator a written report which describes the activities and programs carried out in the state under the grant and the

progress made by such state in meeting the schedule specified under its state plan.

No grant may be made in any fiscal year to a state which in the preceding fiscal year received a grant under this section, unless the Administrator determines that the state made satisfactory progress in meeting the schedule specified by the state in its submitted and approved plan.

Not more than 15 percent of the amount appropriated to carry out this section may be used to make grants to any one state, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of the state.

Beginning with fiscal year 1988, the Administrator is authorized to give priority in making grants, and shall give consideration in determining the Federal share of any grants, to any state which has included effective regulatory mechanisms in any approved state plan and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but not be limited to, deadlines to implementation of best management practices and enforcement procedures to ensure implementation of the state's plan.

There is authorized to be appropriated to carry out this grant program not to exceed \$150 million per fiscal year for fiscal years 1986 through 1990.

Not later than January 1, 1986, and each January 1 thereafter, the Administrator is to transmit to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of these waters.

The Administrator is to transmit to Congress not later than January 1, 1989, a final report on the activities carried out under this section. This report, at a minimum, is to include:

- an analysis of the effectiveness of plans carried out under this section, and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;
- an analysis of the level of state participation in implementing such plan;
- recommendations of the Administrator concerning future programs, including enforcement programs, for controlling pollution from nonpoint sources.

Not less than 5 percent of the funds appropriated to carry out this section shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency which are adequate to carry out this section.

SECTION 8—LAKE RESTORATION GUIDANCE MANUAL

Section 8 amends subsection 104(h) of the Federal Water Pollution Control Act to require the Administrator to submit a lake restoration guidance manual to the House Committee on Public Works and Transportation and the Committee on Environment and

Public Works of the Senate. The manual, to be submitted not later than one year after date of enactment of H.R. 8, shall establish procedures to guide future state and local efforts to improve water quality in lakes.

Subsection 104(h) of the Act currently authorizes the Administrator to enter into contracts with or make grants to public or private agencies for the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes. As part of this effort, the Committee understands that EPA's Office of Research and Development has spent considerable time and resources on an evaluation of the effectiveness of lake quality improvement techniques. It was expected that a guidance manual would be developed based on this work. This has not been done. The Committee believes that a guidance manual will significantly assist future state and local efforts to improve lake quality. Because the bulk of the background work has been done, the Committee is confident that a year or less is sufficient time for EPA to complete and submit this manual.

SECTION 9—SMALL FLOWS CLEARINGHOUSE

This section provides for the establishment and support of a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques. The Administrator is to make available from amounts that are set aside under section 205(i) of the Act for innovative and alternative technology projects and which are not obligated within the required two year period, \$1,000,000, or such lesser amounts as are available, for support of the clearinghouse.

SECTION 10—ELIGIBLE CATEGORIES OF PROJECTS

Subsection (a) of section 10 amends section 201(g)(1) of the Federal Water Pollution Control Act by adding projects to address water quality problems due to impacts of discharges from combines storm water and sanitary sewer overflows to the list of categories which are eligible for Federal grant assistance.

Subsection (b) of section 10 provides that the twenty percent of grant funds which may be used for otherwise ineligible categories at a Governor's request may also be used for control of nonpoint sources of pollution, including innovative and alternative approaches for the control of such pollution.

SECTION 11—TIME LIMIT ON RESOLVING CERTAIN DISPUTES

This section provides that in any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator for resolution of the dispute, the Administrator shall make a final decision on the appeal within 60 days of the filing of such appeal.

SECTION 12—FEDERAL SHARE

Subsection (a) of section 12 amends section 202(a)(1) of the Act by adding projects to address water quality problems due to impacts of discharges from combines storm water and sanitary sewer overflows. This is the subsection which provides that projects which have received a step three construction grant before October 1, 1984, will continue to receive a Federal grant of 75 percent until completion.

Subsection (b) of section 12 provides that, in the case of any project for which an application for a grant has been made before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, the project shall still be eligible for grants of 75 percent of the construction cost.

Subsection (c) of section 12 amends section 202(a)(3) of the Act. This section authorizes the Administrator to make grants to fund all the costs of the modification or replacement of any facilities constructed with a grant made available for innovative technology if the Administrator finds that the facilities have not met design performance, unless the failure is attributable to negligence on the part of any person.

Subsection (c) amends this provision by providing that, in addition, the Administrator is authorized to make a grant to fund all the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that the equipment has not met design performance specifications, unless the failure is attributable to negligence on the part of any person, and if the failure has significantly increased capital or operating and maintenance expenditures.

Subsection (d) provides that the activated bio-filter feature for treatment works of the City of Little Falls, Minnesota, shall be deemed to be an innovative wastewater process and technique and shall be eligible for the increased grants which the Act makes available for innovative technology projects.

The Little Falls project is designed to use activated bio-filters (ABFs) in its treatment system. ABFs, have been used in wastewater systems before, but not as they would be used in Little Falls. In Little Falls, the ABF component will be part of the second stage in a trickling filter system. The innovative classification is appropriate because there exists little or no performance data on the optimum loadings, sizing, and other considerations with which the application can be designed without some risk. There is no other situation of ABFs having been used exactly as is being proposed in the Little Falls treatment works. In addition, there is doubt about how the extreme cold of Minnesota winters will affect performance.

SECTION 13—AGREEMENT ON ELIGIBLE COSTS; GRANTEE CERTIFICATION OF TREATMENT PROCESS; TURNKEY CONTRACTS

Section 203(a) of the Federal Water Pollution Control Act requires each applicant for a grant to submit to the Administrator for his approval plans, specifications and estimates for each proposed project for the construction of treatment works for which a

grant application is made. Section 13(a) amends this provision to provide that before taking final action on such plans, specifications and estimates, the Administrator must first enter into an agreement with the applicant which establishes and specifies to the extent practicable which items to the proposed project are eligible for Federal payments under this section. Once this agreement has been entered into, the Administrator may not refuse to make payments for the Federal share of those reasonable costs of any item specified in the agreement which are incurred on the project.

Under current law, once the Administrator approves a grant applicant's plans, specifications, and estimates, the approval constitutes a contractual obligation of the United States for payment of the Federal Government's proportional contribution to the project covered by the grant. Current agency audit procedures permit construction grants to be obligated only for allowable costs. However, these costs are not determined until a final audit of the project grant is conducted. Thus, an EPA auditor is in a position to and often does reevaluate and override during the final audit process the previously approved allowable costs, despite the fact that the agency approved the plans and specifications for the project prior to obligation of the grants funds. This practice subjects grant recipients to a great deal of vulnerability during the audit process and leads, in some instances, to substantial and unplanned financial burdens for the grantee.

The purpose of section 13(a) is to emphasize and effectuate the Committee's intent that award to a grantee of a Title II wastewater treatment construction grant constitutes a binding contractual obligation of the Federal government. Where the Administrator approves an agreed-upon specific project for grant funding, then under this provision the United States is contractually obligated to fund that project as it was approved, so long as the grantee acted in good faith and in accordance with the grant agreement and the costs are not in violation of Federal law. In this manner, the agency's dealings with the states and with grantees will be on a more reliable and business-like basis, with all parties knowing what costs are allowable for grant funding.

The Committee intends that the Administrator, in implementing section 13, will continue to review plans, specifications, and estimates to ensure that wastewater treatment projects are cost effective.

Section 13(a) also provides that the approval of construction plans and specifications by the Administrator under Section 203(a) shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. In addition, the Administrator is not to approve plans, specifications or estimates for a project unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which they are designed. The purpose of this amendment is to increase the accountability of those involved in the design and construction of publicly owned waste treatment works for the performance of the facility.

The 1981 amendments to the Federal Water Pollution Control Act addressed this problem in part by requiring that the engineer

or engineering firm supervising construction or providing architect services during construction shall continue its relationship to the grant applicant for a period of 1 year after the completion of such treatment works. That specific provision went on to provide that at the end of the 1-year period, the "owner and operator of such treatment works shall certify to the Administrator whether or not such treatment works meet the design specifications and effluent limitations contained in the grant agreement and permit * * * for such works." The 1981 provisions also require that, if the treatment works does not meet its required level of performance, corrections must be made "at other than Federal expense." But the provision does not clear up the numerous factors that contribute to the performance problem in the first place, and to the overlapping and ambiguous lines of responsibility and accountability between all of those involved in the typical grant project. This accountability/responsibility problem stems from the fact that Federal and State officials often involve themselves, both formally and informally, in influencing the nature of the design or process technology to be used in a treatment works, rather than limiting their review to the more traditional areas of the bidability of a project's plans and specifications, and the buildability of whatever it is that was designed.

The approach in subsection (a) would eliminate Government agency involvement in "process" design, leaving the design engineer with that responsibility, as he is normally licensed and required to do, and indeed more appropriately qualified to do. It would, however, retain primary responsibility for reviewing the adequacy and integrity of the structural and physical design of a project with the Government, which is traditionally one of the latter's more appropriate roles.

Subsection (b) allows construction of sewage treatment works utilizing turnkey contracts. This is a contract whereby the community hires one agent who will be responsible for the total design and construction of the treatment system. After completing that project, when it has been determined that the project works properly, then that agent "turns over the keys" to the plant to the municipal government or treatment authority. Then, and only then, does the agent receive final payment.

Subsection (b) provides that after completion of an approved facility plan for a treatment works that has an estimated total cost of \$8,000,000 or less, the applicant proposing to construct the treatment works may, in lieu of proceeding under the other provisions of Title II of the Act, enter into an agreement with the Administrator for the preparation of construction plans and specifications and the building and erection of such treatment works.

The agreement must set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the Federally eligible costs of the project at the applicable Federal share under section 202 of the Act; set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project; contain such assurances by the applicant as the Administrator may require that (1) the proposed treatment works will be

an operable unit and will meet all the requirements of title II (except as otherwise provided in this section), and (2) not later than one year after the date specified as the date for completion of construction of the treatment works; assure that the treatment works will be operating so as to meet the requirements of any applicable permit for the treatment works under section 402 of the Act; require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and contain such other terms and conditions as the Administrator deems necessary to ensure compliance with Title II.

Upon entering into an agreement under this subsection, the Administrator must deposit, from amounts allotted to the State, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

Interest earned on amounts in the account is available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of the treatment works. The amount of these payments shall be in addition to the Federal share of the project otherwise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

The Administrator must reserve a portion of the amount in the account until the final audit of the project. If the amount deposited into the account by the Administrator exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallocate the amount of the excess to the state in which such treatment works are located for the fiscal year in which the audit is completed.

The Administrator cannot obligate more than 20 percent of the amount allotted to a state for a fiscal year under section 205 of the Act for grants for turnkey projects.

In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement, the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under Title II.

SECTION 14—GRANT CONDITIONS—USER CHARGES ON LOW-INCOME RESIDENTIAL USERS

Subsection 14(a) amends section 204(a)(1) of the Federal Water Pollution Control Act to require the Administrator, before approving sewage treatment construction grants for any project, to determine that either any required areawide waste treatment management plan under section 208 is being implemented for such area

and the proposed treatment works are included in such plan or that reasonable progress toward implementation is being made.

Subsection 14(b) amends section 204(a)(2) of the Act and requires similar conformance with plans and reports in sections 303(e) and 305(b) of the Act.

The amendments made in subsections (a) and (b) of section 14 shall take effect two years after the date of enactment of this legislation.

Section 204 of the Act establishes certain conditions that the Administrator must assure are met before making grants. It provides at present that projects receiving funding must be part of existing plans and in conformance with sections 303(e) and 305(b). The amendments in section 14 are designed to provide additional assurance that consistent program progress will be maintained by focusing on implementation.

The Section 208 program provides for the development of areawide waste treatment plans. Grant monies under section 208 are to be made available to identify pollution problems and decide on a management plan to address the problems. Section 303(e) requires each state to have a continuing planning process. Section 305(b) requires submission by each state every two years of a report on the water quality situation for that state.

The Committee, by adopting these amendments in section 14, intends that the programs of areawide planning and consistency with plans and programs to meet the goals of the Act be pursued. The plans developed under section 208, for instance, are not to be static documents to be written and ignored. The Committee expects to see these plans implemented in order to meet the goals of the Act. Similar use is expected of 303(e) and 305(b) requirements.

Section 204(b)(1) of the Federal Water Pollution Control Act provides that, notwithstanding any other provisions of the Act, the Administrator shall not approve any grant for any treatment works unless he shall first have determined that the applicant has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction will pay its proportionate share of the costs of operation and maintenance of any waste treatment services provided by the applicant.

Section 14(c) amends this by providing that a system of user charges which imposes a lower charge for low-income residential users, as defined by the Administrator, shall be deemed to be a user charge system meeting the requirements of section 204, if the Administrator determines that the system was adopted after public notice and hearing. Any additional user charges required of other users of the waste treatment services resulting from application of this subsection are to be determined in accordance with the proportionality requirements of section 204.

SECTION 15—ALLOTMENT OF CONSTRUCTION GRANT FUNDS

Subsection (a) of section 15 includes conforming amendments to section 205(c)(2) of the Federal Water Pollution Control Act which provides for allotment of funds authorized to be appropriated for the Construction Grants Program, and specifies the amount allotted to each state, for fiscal years through fiscal year 1990. Subsec-

tion (a) also adds fiscal years 1986 through 1990 so as to conform with section 3 of H.R. 8 which extends and increases the authorizations for construction grants through fiscal year 1990.

Subsection (b) of section 15 amends section 205(e) of the Act so that it conforms with the extension of the construction grant authorizations in section 3 of H.R. 8.

Section 205(e) provides that, for fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984 and 1985, no state shall receive less than one-half of one percent of the total allotment under subsection (c) of section 205, except that in the case of Guam, Virgin Islands, American Samoa, and the Trust Territories, not more than thirty-three one-hundredths of one percent in the aggregate shall be allotted to all four of these jurisdictions. For the purpose of carrying out subsection 205(e) there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed \$75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, and 1984 and 1985.

Subsection (b) of section 15 also adds fiscal years 1986 through 1990 to section 205(e) and changes the maximum amount available to Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territories from one-third of one percent to two-thirds of one percent in order to better meet their water quality needs.

Subsection (c) amends section 205(g)(1) of the Act so that it will conform with the extension of the Construction Grants Program in section 3 of H.R. 8. Section 205(g)(1) authorizes the Administrator to reserve not to exceed four percent of a state's allotment of construction grant funds for the purpose of making grants to the state for the costs of administering aspects of the construction grants program which the Administrator has delegated to the state.

Subsection (d) also amends section 205(g)(1) by adding a provision that the Administrator shall reserve each fiscal year beginning after September 30, 1985, \$900,000 from the sums available to the State of New York under the subsection for such fiscal year, \$900,000 from the sums available to the State of New Jersey under the subsection for such fiscal year, and \$200,000 from the sums available to the State of Connecticut under the subsection for such fiscal year. These sums shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by these States by interstate compact to carry out the functions of such Commission under the Federal Water Pollution Control Act. The Commission is an environmental agency of the States of New Jersey, New York, and Connecticut, established by an interstate compact having the consent of Congress. Among other things, the Commission has jurisdiction of a regulatory character over water quality in the tidal waters of the northeastern New Jersey, southeastern New York, southwestern Connecticut Metropolitan Area. Specifically, the Interstate Sanitation District includes the Hudson River from the Bear Mountain Bridge to the ocean, Raritan and Sandy Hook Bays, the waterways of the New York Harbor Complex, and Long Island Sound westerly of a line from New Haven to Port Jefferson. The Commission monitors receiving waters and effluents, administers water quality standards, makes regulations containing both effluent limitations and receiving

water quality standards, and has authority to enforce its regulations.

In view of the Commission's role in administering provisions of the Federal Water Pollution Control Act, the Committee considers it appropriate to provide additional grant assistance to the Commission under section 205(g).

Subsection (e) amends section 205(h) of the Act which relates to alternatives to conventional sewage treatment works in rural areas. Section 205(h) provides that the Administrator shall set aside four percent of the sums allotted to a State with a rural population of 25 percent or more. The Administrator is also authorized to set aside not more than four percent of the allotted funds for any other State at the request of the Governor. These funds are to be used only for alternatives to conventional treatment works for municipalities having a population of 3,500 or less, or for highly dispersed sections of larger municipalities.

Subsection (e) of section 15 amends these provisions by changing the four percent mandatory set-aside to provide that it shall be a minimum of four percent, but shall be increased to as much as seven and one-half percent at the request of the Governor. Also, the authorization of a discretionary set-aside for other states of up to four percent at the request of the Governor is changed to authorize a set-aside of up to seven and one-half percent. The purpose of the amendment is to ensure that the sewage treatment needs of smaller communities are more adequately met.

Subsection (f) of section 15 is a conforming amendment to section 205(i) of the Act so that it will be consistent with the extension of the authorization for construction grants contained in section 3 of H.R. 8. Section 205(i) provides that a total (as determined by the governor of a state) of not less than four percent nor more than seven and one-half percent of the construction grant funds allotted to a state shall be used only to increase the Federal share of construction grants for construction of treatment works utilizing innovative or alternative processes and techniques. The increase in the grant for such treatment works is twenty percent greater than the Federal share established in section 202(a)(1), but in no event greater than eighty-five percent.

Subsection (g) of section 15 amends section 205(j)(3) of the Federal Water Pollution Control Act which directs the Administrator to reserve each fiscal year not to exceed one percent of the sums allotted and available for obligation for each state for water quality management planning. Subsection (g) provides that the state shall allocate at least 50 percent of the amount granted to the state for a fiscal year under the section to regional interstate public comprehensive planning organizations in the state, except in any fiscal year for which the Administrator, after consultation with the governor of any state, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of the Act.

In the Municipal Wastewater Treatment Construction Grants Amendments of 1981 (P.L. 97-117), a new subsection, 205(j), was added to provide assured funding for a variety of planning purposes. The set-aside is to be for water quality management planning including, among other things: identifying cost effective and

locally acceptable point and non-point measures; developing implementation plans; identifying water quality problems; and determining which publicly owned treatment works should be built, and for implementation of section 303(e) of the Act.

A key part of the provision in the 1981 Amendments, which is now a part of the Federal Water Pollution Control Act, is:

(3) In carrying out planning with grants made under paragraph (2) of this subsection, a state shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undersigned public comprehensive planning organizations to carry out the purposes of this subsection.

Subsection (g) reinforces the original intent to have these organizations carry out a significant part of the program under section 205(j). Such comprehensive planning organizations are assured at least 50 percent of Section 205(j) funds. There is an exception to this requirement where the Administrator of EPA, after consultation with the governor, determines that pass through will not have any significant impact on achieving regional or interstate participation. It is the Committee's intent that any decision not to pass through funds to comprehensive planning organizations should be made only where the state advises against a pass through and only where the Administrator makes a finding that pass through will not assist in achieving the Act's goals.

Subsection (h) of section 15 adds a new subsection to section 205 of the Federal Water Pollution Control Act which provides that 1/4 of 1 percent of any amount appropriated for the Construction Grants Program for any fiscal year after fiscal year 1985 shall be reserved by the administrator for carrying out investigations and audits authorized by the Act of projects for which funds are made available under Title II.

This provision is based on information obtained by an investigation conducted by the Committee's Subcommittee on Investigations and Oversight. In 1981, that Subcommittee investigated problems associated with the construction of treatment works and the adequacy of EPA auditing procedures.

At the time of the Subcommittee's review, the EPA Office of Inspector General's (OIG) resources were so inadequate that it was facing a 70 work-year backlog in audit requests. Further, the OIG had virtually no investigators in two of the EPA's audit regions covering 27 states which had more than \$10 billion in active Construction Grants Program projects. Information recently obtained by the Subcommittee indicates that the EPA is still confronted with a backlog of as many as \$1 billion worth of wastewater treatment projects in need of final audits.

Subsection (h), which would result in the allocation of some \$6 million annually to the Inspector General's Office at the current level of Construction Grants Program authorizations, will help insure the integrity of the program and the protection of the public's investment in these wastewater treatment facilities.

SECTION 16—GRANTS TO STATES FOR ESTABLISHMENT OF WATER
POLLUTION CONTROL REVOLVING FUNDS

Section 16 adds to Title II of the Federal Water Pollution Control Act a program for grants to states for establishment of water pollution control revolving funds.

Subsection (a) of new section 220 directs the Administrator to make a grant to each state for the purpose of establishing a Water Pollution Control Revolving Fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works as defined in section 212 of the Act which are publicly owned.

Subsection (b) provides that, before receiving a grant, the state must first deposit in the fund an amount equal to 20 percent of the amount allotted to the state for a fiscal year. In addition, the Governor may deposit not to exceed twenty percent of the amount allotted to the state under section 205 (construction grant funds), if the state has deposited from non-Federal funds an amount equal to twenty percent of the section 205 funds to be deposited.

Each state must submit annually to the Administrator a certification that, upon completion of any project for treatment works for which financial assistance is made available under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable state and Federal water quality standards. The state must further certify that it will comply with all provisions of section 16.

Subsection (c) of new section 220 provides that a state may use amounts in the Revolving Fund only to make loans, loan guarantees, payments to reduce interest on loans and loan guarantees, bond interest subsidies, and bond guarantees to municipalities and intermunicipal and interstate agencies, or purchase of insurance for obligations. A state may also use the fund as security for revenue bonds issued to finance construction of treatment works.

Subsection (d) provides that each state shall establish a Water Pollution Control Revolving Fund to provide assistance under this section. The state must deposit in the revolving fund any Federal funds allotted to the state under this section, any amounts received by the state for repayment of loans made by the state with amounts in the fund, any amounts required to be deposited in the fund under subsection (b)(1) (state 20 percent share and up to 20 percent of construction grant funds) and any additional funds which the state wishes to deposit in the fund.

A state may use amounts in the fund for the payment of expenses of administration of the fund, but no more than four percent of the grant amount may be used for this purpose.

A state may invest any portion of the funds in the revolving fund which is not currently needed for providing assistance from the fund. A state may make assistance available from the Revolving Fund established by the state to finance the costs of facility planning and the preparation of plans, specifications and estimates for construction of publicly owned treatment works. If the grant recipient under this subsection ultimately receives a construction grant from the Environmental Protection Agency which includes reimbursement for non-Federal funds expended for planning and engi-

neering, the recipient must promptly repay the loan to the extent of the allowance it receives from the Environmental Protection Agency.

A state may provide assistance under this section to a municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of Title II.

A state may provide assistance from a revolving fund to a municipality or intermunicipal or interstate agency for the non-Federal share of the costs of a project which is receiving assistance under the construction grants program.

A state may only make a loan from the revolving fund if the recipient establishes a dedicated source of revenue for repayment of the loan.

A state may provide financial assistance from the revolving fund only for projects which are on the state priority list. Assistance may be provided regardless of the rank of a project on the priority list.

Subsection (e) requires each state to annually make a full and complete report to the Administrator concerning the use of Federal funds made available under this section in such manner as the Administrator shall prescribe. Also, at least annually, the Administrator shall conduct, or require each state to have independently conducted, reviews and audits as may be deemed necessary and appropriate by the Administrator to carry out the objectives of this section. Audits of the use of Federal funds shall be conducted in accordance with the auditing procedures of the General Accounting Office.

Subsection (f) states that the provisions of Title II of the Federal Water Pollution Control Act shall not apply to financial assistance under new section 220 except to the extent specifically provided in new section 220. The purpose of this provisions is to give states maximum flexibility in the use of the revolving fund.

Subsection (g) of new section 220 authorizes to be appropriated to carry out this section not to exceed \$600,000,000 per fiscal year for each of the fiscal years 1986 through 1990, \$2,400,000,000 for fiscal year 1991, \$1,800,000,000 for fiscal year 1992, \$1,200,000,000 for fiscal year 1993, and \$600,000,000 for fiscal year 1994. These funds are to be allotted by the Administrator in accordance with the same table which provides for allotment of Construction Grant funds. Sums allotted to a state for a fiscal year shall remain available for a grant to such state for the fiscal year for which authorized and for the following two fiscal years as well. Any funds granted to a state for a fiscal year under this section which are not utilized by such state for any of the purposes of this section during such fiscal years shall be repaid to the Administrator for reallocation among the other states.

The revolving fund was intentionally developed to provide maximum flexibility to the states. The Committee believes this program should be maintained primarily as a state-controlled effort, with mandatory Federal requirements, policies, and practices kept to an absolute minimum. The Committee will, however, exercise its oversight responsibilities to assure that the states manage the program

to optimize the benefits to localities in their efforts to meet the requirements of the Federal Water Pollution Control Act.

Many communities on state priority lists for construction grants funding are too low on the lists to receive grants. Others may not receive the grants as quickly as they are prepared to go forward. The revolving fund is intended to provide resources to the states which will enable them to better meet the requirements of the Act. The fund can be used for a project anywhere on the priority list and can be used in combination with grant funds. The \$9 billion authorization over nine years will provide for permanent funds among the states totalling \$10.8 billion nationwide, including \$1.8 billion in state monies. In addition, the authority to deposit up to twenty percent of construction grant funds could result in a maximum additional amount of \$2.88 billion, including \$480 million in state monies.

SECTION 17—INNOVATIVE TECHNOLOGY COMPLIANCE DEADLINES FOR DIRECT DISCHARGERS

Section 310(k) of the Act provides that, in the case of any facility which proposes to comply with the requirements of best available technology by replacing existing production capacity with an innovative production process, which will result in an effluent reduction significantly greater than that required by the otherwise applicable effluent limitation or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable limitation, the Administrator may establish a compliance date no later than July 1, 1987—three years later than the final compliance date otherwise provided in the Act. Section 17 amends this provision, changing the compliance date from July 1, 1987, to a date two years after the date for compliance with the effluent limitation which is otherwise applicable.

In the period since the 1977 Amendments, there have been delays in final promulgation of effluent guidelines. This is in large part what has led to extension of the compliance deadlines in section 4 of H.R. 8. There is still potential for the kinds of innovative processes contemplated by the 1977 Amendments. For this reason, the section 301(k) innovative technology extension is continued and is to be no later than two years after the date for compliance with effluent limitations otherwise applicable.

SECTION 18—VARIANCES FROM THE APPLICATION OF EFFLUENT LIMITATIONS

This section adds a new subsection (n) to section 301 of the Federal Water Pollution Control Act. Section 301 requires compliance with effluent limitations based on best practical, best available, and best conventional technologies.

The new subsection provides that upon application of any person who provided (or did not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under section 301 or section 304 of the Act, the Administrator may grant a variance from the applica-

tion of the limitation with respect to the discharge by the person of any pollutant if the Administrator determines that factors relating to the facilities, equipment, and processes of the person are fundamentally different than the factors considered in the establishment of the effluent limitations.

In the application of national effluent guidelines, the Environmental Protection Agency developed a fundamentally different factors (FDF) determination procedure. Under this procedure, EPA required a facility to first submit a petition demonstrating that there is some factor in its situation that is fundamentally different from those considered in establishing the national regulation. Only information not previously considered could be the basis for an FDF determination petition.

To establish a fundamental difference, a facility had to show that compliance with the national limits would result in either a removal cost wholly out of proportion to the removal cost considered by the Agency during the development of the national regulation or a fundamentally more adverse non-water-quality impact.

Any alternative technology based limits could reflect only the degree of modification actually required by the fundamental difference.

Finally, in order to insure that all points of view were considered, the public was informed of applications for FDF determinations and given the opportunity to participate in the proceeding.

The FDF determination procedure is a procedure through which a facility receives an individualized determination of its technology-based effluent requirements. As such, it is analogous to the Agency's use of best professional judgment permit determinations to establish effluent limitations for industrial facilities whose national effluent guidelines have not been issued.

In 1983, the Third Circuit Court of Appeals held that EPA did not have authority to issue FDF variations for pretreatment requirements applicable to indirect dischargers, and, by implication, effluent limitations for direct dischargers. This decision was recently overturned by the United States Supreme Court.

Section 18 recognizes EPA's authority to grant FDF variances, but places limitations on it to prevent its misuse.

An application for a variance must be made within 180 days after the establishment or revision of an effluent limitation for which a variance is sought. If the application is denied, the applicant must comply with the original compliance date for the limitation. E.P.A. is directed to take prompt action in making a decision, and is directed to do so within 180 days, to the maximum extent practicable.

Section 18 applies only to effluent limitations established or revised after the date of enactment of H.R. 8. The granting of variances from effluent limitations established or revised prior to the date of enactment is to be in accordance with procedures established before the date of enactment. Also, the amendment made by Section 18 shall not affect any procedures or requirements in effect before the date of the enactment of H.R. 8 with respect to the granting of variances from the application of effluent limitations established or revised on or before the date of the enactment of H.R. 8 with respect to the granting of variances from the applica-

tion of effluent limitations established or revised on or before the date of enactment in accordance with any provision of the Federal Water Pollution Control Act.

Factors which may be considered to be fundamentally different under section 18 include the nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater; the volume of the discharger's process wastewater and effluent discharged; non-water quality environmental impact of control and treatment of the discharger's raw waste load; energy requirements of the application of control and treatment technology; age, size, land availability, and configuration as they related to the discharger's equipment or facilities; processes employed; process changes; engineering aspects of the application of control technology; and the cost of compliance with required control technology. A variance request or portion of such a request under this section shall not be granted on any of the following grounds: the infeasibility of installing the required waste treatment equipment within the time the Act allows; the assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factors listed above; the discharger's ability to pay for the required waste treatment; or the impact of a discharge on local receiving water quality.

There are two approaches for responding to a facility with valid grounds for arguing that it is fundamentally different from other facilities in its category. One possibility is to develop a separate subcategory within the regulation, undertake a separate data collection and analysis effort and then repropose and issue the final rule. The other alternative is to leave the national rule in place and use the FDF determination procedure to establish alternative technology-based limitations for the facility that accurately reflect its situation. The subcategorization approach would add further complications and require potentially substantial additional time in developing what are already extraordinarily complex and detailed national regulations. By contrast, the FDF determination procedure allows both implementation of the national rule and consideration of individual petitions claiming unique factors.

The Committee, for these reasons, concludes that the use of the FDF procedure, with the limitations contained in Section 18, will enable the establishment of new effluent limitations to proceed in an efficient manner while still adhering to the goals of the Federal Water Pollution Control Act.

SECTION 19—WATER QUALITY CRITERIA

Section 304(a)(1) of the Act directs the Administrator to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare. Section 19 amends this provision by adding the requirement that, in developing, publishing and revising criteria, the Administrator shall consider, among other things, the effects on the ecosystem of water hardness ph, chemical and physical interactions, persistence of pollutants and the long-term effects of pollutants; sedimentation from chemical reaction of pollutants, the absorptive properties of sediments, resuspension, and bio-

uptake.

Section 19 states that EPA, in issuing new or revised water quality criteria, should set criteria which will provide an ample margin of safety to protect human health and fish and wildlife resources. The Committee does not intend, by imposing this "ample margin of safety" test, to indicate that criteria should be set at zero for all substances which may have no proven safety thresholds. The purpose of the new provision is instead to ensure that EPA water quality criteria consider the possibility of risks which have not yet been identified.

Section 19 also adds the requirement that in the development of new or revised criteria with respect to a pollutant, whenever the Administrator determines that a well-founded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the section, the Administrator shall publish a description of this difference of opinion along with the publication of the criteria.

Water quality criteria are essential to the establishment of water quality standards, which, in turn, are of fundamental importance to the pollution control scheme envisioned in the Act. The Committee is aware that, in Colorado and some other states, high designated uses—the other water quality standard building-blocks—established through the water quality standards process have been set for some stream segments. A number of commenters have argued that the EPA water quality regulations restricting the modification of water quality goals make it unnecessarily difficult for states to respond in a reasonable fashion to changing circumstances and unforeseen difficulties.

Municipalities and industrial interests in Colorado have indicated this problem appears to be particularly acute where there are low or intermittent flows in receiving streams. This can be caused by natural variations or limitations in runoff, or by man-made diversions or impoundments authorized by state laws governing the allocation of water. The natural presence in receiving waters of toxic metals can also pose problems for attaining designated uses. In addition, the reduced availability of Federal funding for advanced waste treatment could increase the economic difficulty faced by affected municipalities in attempting to attain water quality standards.

It has been suggested that states be given the authority to reduce or relax the designated uses of these stream segments through the NPDES permit issuance process. The Committee recognizes the existence of this problem, but it is not convinced that a statutory response is necessary. Instead, the Act and EPA regulations provide an appropriate mechanism for readjusting water quality standards where standards are unattainable.

For example, it has been suggested that some water quality standards in Colorado initially were established without regard to their attainability. If so, the state may review these uses and, if they are found to be unattainable, revised standards may be adopted.

EPA regulations set forth procedures for modifying inappropriate standards through an intergovernmental review process which pro-

vides an opportunity for public comment. Thus, for example, standards can be revised to reflect low flow conditions, hydrologic modifications that prevent attainment of the use designated in the standard, natural physical conditions of the stream that preclude attainment of the aquatic life protection use, or if controls needed to meet the standard would result in substantial or widespread economic impact.

None of these criteria lead themselves to a precise, uniform national definition. In reviewing state proposals to revise water quality standards pursuant to these criteria, EPA policy should be flexible enough to accommodate regional variations. For example, in states such as Colorado that are rich in mineral resources, some streams may exhibit natural background concentrations of toxic metals that preclude attainment of a sensitive cold water fishery though other environmental parameters, such as temperature and dissolved oxygen, would sustain such a fishery. In such cases, EPA should recognize the unique hydrogeologic character of such streams and allow the state appropriate flexibility in defining the nature of the aquatic life protection use.

The Committee is aware that the listing of an element as a toxic pollutant under section 307 does not necessarily indicate that the element is toxic to humans in all cases. Water quality criteria established under section 304(a) should reflect available scientific evidence on the extent and circumstances of possible toxic effects. This is true in the case of elemental zinc which, although listed under section 307 of the Act as a toxic pollutant, is generally harmful only to certain species of fish and not to humans.

In section 304(a) of the Federal Water Pollution Control Act, EPA has adopted water quality criteria that are based on the latest scientific knowledge as to the effect of a pollutant on aquatic organisms and human health. The water quality criteria for zinc properly reflects concern for its toxicity to certain fish and other aquatic species, but does not indicate a real concern for human health.

SECTION 20—TEST PROCEDURES

This section changes the date by which the Administrator must promulgate guidelines establishing test procedures for the analysis of pollutants to ninety days after the date of enactment of H.R. 8.

SECTION 21—PRETREATMENT STANDARDS

Section 21 amends section 307 of the Federal Water Pollution Control Act to authorize the owner or operator of a publicly owned treatment works to grant up to a two-year extension for compliance with a categorical pretreatment standard to an indirect discharger that intends to comply with such applicable standard by using an innovative treatment system that meets the criteria specified in section 301(k) of the Act, if (1) the Administrator determines that the innovative system has the potential for industry-wide application and the action will not cause the publicly owned treatment works to violate its NPDES permit, and (2) the Administrator or a state having an approved pretreatment program concurs with the proposed action of the owner or operator of the publicly owned treatment works.

Section 301(k) of the Federal Water Pollution Control Act currently authorizes an extension of the date for compliance with certain best available technology treatment requirements for direct dischargers where the applicable innovative technology or process installed by the direct discharger has potential for industry-wide application and achieves either significantly greater pollutant reduction compared to that required by the applicable effluent limitations or achieves the required reduction at significantly lower cost. Subsection (a) is intended to provide the same kind of innovative technology deadline extension for indirect dischargers as is provided in section 301(k) of the Federal Water Pollution Control Act, as amended by section 19 of H.R. 8, for direct dischargers. In this way, the Committee intends to provide an additional incentive to the development of new and better techniques to control the discharge of pollutants.

The purpose of this amendment is to encourage the development of innovative processes and control technologies. It is not in any way intended to provide a means for delay in compliance with the deadlines established in the Act. The Committee thus understands "innovative system" to be one which has not yet been demonstrated on a commercial scale under operating conditions in any industry; is proposed for application in a very few plants; and is unlikely to be installed without this encouragement. Additionally, this provision is not intended to allow delays by other companies awaiting the results of the demonstration.

Subsection (b) of section 21 directs the Administrator to increase the number of employees in the Agency in order to effectively implement the Federal Water Pollution Control Act's pretreatment requirements.

The Committee believes that insufficient Agency resources have been dedicated to regulatory and implementation activities relating to the National Pretreatment Program. This program has been surrounded by controversy since 1972 and it is only now on the verge of being implemented nationwide.

The regulatory deadline for approval of required local pretreatment programs was July 1, 1983. At the present time, there are 1456 municipalities affected by the requirement to develop an approvable local pretreatment program. As of March 31, 1985, a total of 995 local programs has been approved, and the regions and states indicated that another 210 complete submissions were currently either under or awaiting review, reviewed and found approvable for public notice, or on public notice. Most of the remaining 251 municipalities have submitted one or more portions of their programs for review.

The Committee believes that EPA resources dedicated to pretreatment program approval and enforcement activities should be substantially increased. This is especially true with regard to the continuing effort which will be involved in assuring that the program is implemented effectively.

SECTION 22—CRIMINAL PENALTIES

This section amends section 309 of the Federal Water Pollution Control Act to provide penalties for dischargers or individuals who

knowingly or negligently violate or cause the violation of certain of the Act's requirements.

Under section 22, punishment by fine of between \$2,500 and \$25,000 per day, or imprisonment for up to a year, or both, is required with respect to (1) any person who negligently violates section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who negligently introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. Second and subsequent violations shall be punished by a fine or not more than \$50,000 per day, or by imprisonment of up to two years, or both.

Section 22 also requires punishment by fine of between \$5,000 and \$50,000 per day, or imprisonment for up to two years, or both, for (1) any person who knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of the Act, or any permit condition or limitation implementing any of these sections in an NPDES permit, or any requirement imposed in an approved pretreatment program, or any requirement in a dredge and fill permit under section 404 of the Act; or (2) any person who knowingly introduces into a sewer system or a publicly owned treatment works any pollutant or hazardous substances which causes or may reasonably be anticipated to cause personal injury or property damage or which causes the treatment works to be in violation of its NPDES permit requirements. As with negligent violations, for subsequent knowing violations, the maximum punishment which may be imposed for these knowing violations is twice that pertaining to the initial violation.

The section provides, for both of these negligent or knowing violations, an affirmative defense that the introduction of any pollutant or hazardous substance into the sewer system or treatment works was in compliance with all applicable Federal, state and local requirements governing the introduction.

Any person knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under the Act shall upon conviction be punished by a fine of up to \$10,000 or imprisonment for up to two years, or both. Second and subsequent convictions shall be punished by fine of up to \$20,000 or by imprisonment of up to four years, or both.

For the purpose of section 22, the term "person" means any responsible corporate officer in addition to the definition of the term in section 502(5) of the Federal Water Pollution Control Act. The term "hazardous substance" means any substance designated pursuant to section 311 of the Federal Water Pollution Control Act; any element, compound, mixture, solution, or substance designated under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980; hazardous waste having

the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act; any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

Presently the Federal Water Pollution Control Act has no provision that deals with knowing violations of major statutory or regulatory requirements. Section 22 is intended to be used primarily to address intentional violations of the Act occurring on a regular basis over an extended period of time that result in significant harm to public health or the environment. The section is intended to provide for imposition of severe penalties for such actions.

SECTION 23—CIVIL PENALTIES

Subsection (a) of this section increases the maximum amount of a civil penalty for violating certain provisions of the Act from \$10,000 per day to \$25,000 per day.

Subsection (b) provides that the Federal Water Pollution Control Act shall not be construed as requiring a state to have a civil penalty for violations described in section 309(d) which has the same monetary amount as the civil penalty established by this section. This relates to the requirement in the Act that a state have adequate enforcement and penalty provisions in order to assume management of the National Pollution Discharge Elimination System under section 402 of the Act.

SECTION 24—ADMINISTRATIVE PENALTIES

This section authorizes the assessment of administrative civil penalties for violations of the Act. Whenever on the basis of any information available to him the Administrator finds that any person is in violation of sections 301 (except with respect to a violation of section 404), 302, 306, 307, 318 or 405 of the Act or is in violation of any permit condition or limitation implementing any of these sections in a permit issued under section 402 of the Act, he may, after consultation with the state in which the violation occurs, assess a civil penalty of not more than \$10,000 per day of violation, except that the penalty shall not exceed a total of \$125,000. The Secretary of the Army is given similar authority in connection with permits issued under section 404 of the Act, which relates to the discharge of dredged or fill material.

A civil penalty is assessed under this provision by the Administrator or the Secretary, as the case may be, by an order made on the record after opportunity for a hearing. Before issuing such an order, the Administrator or the Secretary is required to give written notice to the person to be assessed the civil penalty of the proposal to issue such an order and is required to provide the person with an opportunity to request, within 15 days, a hearing on the order. Public notice and reasonable opportunity to comment must also be provided.

Any person who comments on a proposed assessment shall be given notice of any hearing held and any order assessing a penalty.

In any such hearing, the person shall have a reasonable opportunity to present evidence.

If no hearing is held before the issuance of an order assessing a penalty, any person who commented on the proposed assessment may petition the Administrator or Secretary to set aside the order and to provide a hearing on the penalty. The Administrator or Secretary must set aside the order and provide a hearing if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for the denial.

The Administrator or the Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this provision.

Any person who requested a hearing with regard to the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other Circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making the assessment was issued.

If any person fails to pay an assessment of his civil penalty, after the order making the assessment has become a final order, and where the person does not file a petition for judicial review of the order, or after the court has entered a final judgment in favor of the Secretary of the Administrator, the Attorney General shall recover the amount assessed in an action brought in any appropriate District Court of the United States.

The Administrator and the Secretary are given the authority to issue subpoenas in connection with hearings under this provision and may request the Attorney General to bring an action to enforce any subpoena.

Any violation with respect to which any civil penalty is imposed under this provision is not subject to a civil penalty under section 309(d) or section 311(b) of the Federal Water Pollution Control Act.

When a state has proceeded with an enforcement action relating to a violation with respect to which the Administrator or the Secretary is authorized to assess a civil penalty under this provision, the Administrator and the Secretary are not authorized to take any action under this subsection if the state demonstrates that the state-imposed penalty is appropriate.

No action by the Administrator under section 24 shall affect any person's obligation to comply with any section of the Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of the Act.

The citizen suits provision in section 505(b)(1) of the Federal Water Pollution Control Act is amended to provide that no action can be commenced by a citizen if the Administrator or state has commenced and is diligently pursuing the assessment of a civil penalty. The same prohibition applies in existing law to those in-

stances where the Administrator or a state is diligently pursuing a civil or criminal action.

The Committee intends that, in determining the amount of an administrative civil penalty, the Administrator or Secretary must take into account the nature, circumstances, extent and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require. Among the specific issues which should be considered, in the case of violations of limits in NPDES permits and EPA pretreatment standards, is the statistical basis for the limits. To account for long-range effluent variability, EPA sets effluent limitation guidelines and pretreatment standards at levels which well-operated plants are statistically expected to exceed a certain small percentage of the time (usually one or five percent) over the long-term. Before assessing a penalty, EPA should review the violations in light of the statistical probability that some violations would occur even at well-operated plants.

The maximum administrative penalty that may be assessed in an administrative enforcement action under this provision is \$125,000. If a series of closely related violations occurs due to a single operational upset which leads to simultaneous violations of several pollutant parameters over a period of several days, EPA may bring one enforcement action, subject to the \$125,000 maximum. EPA may not seek to evade the \$125,000 maximum by, for example, bringing separate enforcement actions for each of these simultaneous violations. However, EPA is free to bring separate actions for individual violations (or groups of violations) which are not of this nature.

SECTION 25—CLEAN LAKES

This section contains a number of amendments to section 314 of the Federal Water Pollution Control Act, which establishes a grant assistance program to improve the water quality of lakes.

Subsection (a) of section 25 deletes the reference to "fresh water" in section 314(a)(1) in order to make the Clean Lakes Program applicable to saline, as well as fresh water, lakes. The Committee believes that lakes which are saline, both inland and those connected to bays, estuaries or other saline waters where salinity from those sources enters the lake, should not be excluded from the water quality improvement program for lakes under section 314.

Subsection (b) adds a number of new subsections to section 314.

New subsection (d) provides that the Administrator shall make grants to states for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The amount granted to the state for such a project shall not exceed 70 percent of the cost of the project. There is authorized to be appropriated not to exceed \$50 million per year for the Fiscal Years 1986 through 1990 for these purposes.

New subsection (e) directs the Administrator to submit annually to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works a report

on the status and trend of water quality in lakes in the United States, including, but not limited to, the nature and extent of pollution loading from point and nonpoint sources and the extent to which the use of lakes is impaired as a result of such pollution, particularly with respect to toxic pollution.

Subsection (c) of section 25 consists of technical amendments to existing law to reflect the amendments made by section 25.

Subsection (d) of section 25 contains clean lakes projects.

Paragraph (1) of subsection (d) directs the Administrator to study, in cooperation with the State of Texas, water quality problems in Lake Houston, Texas, and undertake such control measures as determined necessary to improve water quality. The study will include, but not be limited to, evaluating the feasibility of regional or consolidated waste treatment facilities and developing recommendations for cost-effective control of pollutants entering the Lake Houston watershed. A report is to be submitted to the Committee on Public Works and Transportation and the Committee on Environment and Public Works of the Senate.

Lake Houston is a 12,000 acre lake located in the northeast section of Houston, Texas. The lake provides about 40 percent of the drinking water for the City of Houston. It is also used by thousands of residents of the Houston area for a wide range of recreational activities. At present, there is great concern that high fecal coliform counts indicate a potential serious health hazard. Given the key role played by Lake Houston in the area, the Committee believes priority action is warranted.

There has been extensive development in the vicinity of Lake Houston and a large number of very small treatment plants have been put in place in the watershed. Most of these treat less than 1 million gallons per day. Overloading, poor performance, or lack of proper operation and maintenance of these small plants may be significant factors in the water quality problems being experienced at Lake Houston. The Committee is directing that these and other factors be studied and measures taken to eliminate water quality problems. One approach for consideration is consolidating the smaller treatment plants into larger, more effective sewage treatment systems.

Paragraph (2) of subsection (d) directs the Administrator, in cooperation with the Secretary of the Army, and in consultation with state and local agencies, to conduct a one-year study of Beaver Lake, Arkansas, and then undertake a demonstration project at Beaver Lake to determine the effectiveness of measures identified in the study. The study is to find means to optimize achievement of the purposes for which Beaver Dam was constructed while preserving and enhancing the quality of the reservoir's water. Following the demonstration project, the Administrator is to submit a report along with recommendations for further measures to improve the water quality of Beaver Lake. This report is to be submitted to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate. To carry out this subsection, funds appropriated under subsections (c) and (d) of section 314 of the Federal Water Pollution Control Act are available.

Beaver Lake is on the White River in northwestern Arkansas, in the Ozark highlands. Beaver Dam, behind which the lake is impounded, was completed by the U.S. Army Corps of Engineers in 1965 and impounds nearly 2 million acre-feet of water. It is operated in conjunction with other lakes in the White River basin to prevent flood damage down river. It also serves as an important source of hydroelectric power and water supply. In addition, there are eleven parks around the lake, providing substantial recreational opportunity. A high level of water quality is needed to maintain the varied uses of Beaver Lake. The comprehensive, one-year study followed by a thorough demonstration project, will provide the opportunity for improvements in the water quality of the lake.

Paragraph (3) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt, stumps and other obstructions from Greenwood Lake and Belcher Creek, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report, along with recommendations for further measures to improve the water quality of Greenwood Lake and Belcher Creek, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated \$10 million to carry out this project.

Paragraph (4) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt and stumps from, and the control of pollution from nonpoint sources in, Deal Lake, Monmouth County, New Jersey. Upon completion of the demonstration project, the Administrator is to submit a report on the project, along with recommendations for further measures to improve the water quality of Deal Lake, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works. There is authorized to be appropriated \$8 million to carry out this project.

Paragraph (5) of subsection (d) directs the Administrator to undertake a demonstration project for the restoration of Alcyon Lake in New Jersey including removal and disposal of contaminated sediments in the Lake. Upon completion of the project, a report is to be submitted to the House Committee on Public Works and Transportation and the Senate Environment and Public Works Committee, together with recommendations for further cleanup measures. This is authorized to be appropriated \$3,500,000 to carry out this project.

Paragraph (6) of subsection (d) directs the Administrator to undertake a demonstration project for the removal of silt and aquatic growth from Sauk Lake and its tributary streams in the vicinity of Sauk Center, Stearns County, Minnesota. Upon completion of the project, the Administrator is to submit a report to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate, along with recommendations of further measures to improve the water quality of Sauk Lake. There is authorized to be appropriated \$2,000,000 to carry out this project. The Committee directs the Administrator to use dredged material from this project as cover on the Sauk Centre Landfill, to the maximum extent feasible.

Paragraph (7) of subsection (d) directs the Administrator to undertake a demonstration project to remove silt and aquatic growth from Lake Worth, Tarrant County, Texas, including the construction of silt traps and providing other devices or equipment to prevent and abate the further deposit of sediment in the lake. The project shall also provide for the use the dredged material in the reclamation of despoiled land. Upon completion of the project, the Administrator is to submit a report, along with recommendations of further measures to improve the quality of the lake, to the Committee on Public Works and Transportation of the House and the Committee on Environment and Public Works of the Senate. There is authorized to be appropriated \$1,750,000 to carry out this project.

SECTION 26—NPDES PERMITS

Section 402(b)(1)(B) of the Federal Water Pollution Control Act currently provides that permits for the discharge of pollutants are to be for fixed terms not exceeding five year.

The burden placed upon the Agency and the states by virtue of the numerous permits that must be issued or renewed each year has, among other things, led to extended delays in the permitting process. In order to help relieve these burdens and to expedite the process for the Agency, states, and permittees alike, section 26(a) authorizes the issuance of certain permits for terms of up to ten years.

For a permit to be granted for a term not to exceed ten years, the state must determine, in accordance with guidelines established by the Administrator, or the Administrator must determine (depending on whether the permit program is administered by the state or EPA), that the applicant has consistently complied with any permit issued under section 402 of the Act, and that toxic and non-conventional pollutants are not detectable in the effluent or that these pollutants are present only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources.

For a permit issued for a term in excess of five years, the permit must be modified promptly to insure compliance with any new or revised effluent limitation under section 307(a) of the Act (toxics) or any new or revised requirement pursuant to a standard under section 303 of the Act (water quality standards) when the effluent limitation is more stringent than the existing limitation or controls a pollutant not controlled in the permit.

The Agency and the states are issuing most permits for a second time. Since initial permit issuance, a great deal of familiarity and experience has been gained both with the permitting process and with specific permits and permittees. In many cases, this justifies an extended permit term. Accordingly, the Committee has included a provision providing that permits may be for a term not exceeding ten years, but only in those cases where toxic or non-conventional pollutants are not a factor.

In addition, nothing in this provision infringes on the Agency's ability to establish shorter permit terms where the Agency deems it appropriate. Given the wide variety of permits and recognizing that the Agency is just beginning to issue many major permits

with toxic limitations for the first time, it is understood that EPA will need the flexibility to set maximum permit terms of less than ten years for some dischargers.

Subsection (b) of section 26 of the bill provides that the Administrator shall not require a permit under section 402 or directly or indirectly require any state to require such a permit for discharges of stormwater run-off which (1) are from mining operations or oil gas exploration, production, processing, or treatment operations, (2) are composed entirely of flows from conveyances or systems of conveyances used for collecting and conveying precipitation run-off; and (3) are not contaminated with process wastes, overburden, raw materials, toxic pollutants above background levels, spilled product, oil grease, or hazardous substances.

Any person discharging stormwater run-off described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

The subsection was developed by the Committee in recognition of the fact that there are numerous situations in the mining and oil and gas industries where stormwater is channeled around plants and operations through a series of ditches and similar devices in order to prevent pollution contamination of the stormwater. Many of these stormwater run-off devices are voluntary means of pollution control. For example, many mining operations located in mountainous and snow-packed areas collect run-off around the mine sites to keep such water from coming into contact with and being contaminated by process water or materials. The Committee believes that, to avoid penalizing operators for using good management practices designed to prevent or minimize pollution and for making expenditures to prevent stormwater run-off contamination, uncontaminated stormwater diversion devices should not be regulated under the permit scheme of the Act.

Subsection (c) amends section 402 of the Federal Water Pollution Control Act by adding a new subsection (m). New subsection (m) provides that, in issuing a permit to a publicly owned treatment works, the Administrator shall not require additional pretreatment by any indirect discharger of conventional pollutants introduced into the treatment works as a substitute for inadequate pollution removal by the treatment works due to design or operation problems for which the treatment works is responsible. Indirect dischargers into the works must still comply with all applicable pretreatment standards promulgated under the Federal Water Pollution Control Act. Nothing in this subsection affects the Administrator's authority under sections 307 and 309 of the Act, affects state and local authority under section 307(b)(1) (pretreatment programs) or section 510 (state authority to establish limitations on discharges of pollutants), relieves the treatment works from its obligations to meet requirements of the Act, or otherwise precludes the treatment works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit.

When a publicly owned treatment works is failing to meet its permit limits due in whole or in part to a failure by the treatment works in its responsibilities, the Administrator shall not require pretreatment of conventional pollutants by indirect discharges to

remedy that problem. This provision simply recognizes that in such circumstances the burden of correcting the problem lies with the publicly owned treatment works itself through adjustment of its facilities or operation. The language of this provision makes clear, however, that discharges of conventional wastes must be in compliance with all applicable pretreatment limitations and prohibitions. In addition, this subsection is not designed to interfere with EPA's enforcement authorities, state and local pretreatment authorities, or a municipality's responsibilities and options to treat or require pretreatment in order to comply with its permit requirements.

Subsection (d) amends section 402 of the Federal Water Pollution Control Act by adding new subsection (n). New subsection (n) allows partial delegation to the states of the Act's NPDES program. Under this provision, the Governor of a state may submit and the Administrator may approve a partial permit program for point source discharges into the navigable waters of the state where the state's partial permit program covers, at a minimum, either administration of a major category of the discharges into the state's navigable waters or a major component of the state's NPDES permit program. With respect to a partial permit program covering administration of a major category of discharges, the Administrator is authorized to approve such a program if the program covers in a complete fashion all of the discharges under the jurisdiction of a department or agency of the state and if the Administrator determines that the partial program represents a significant and identifiable part of the state's NPDES program. Under partial delegation and assumption, states with point source jurisdiction split among two or more state agencies could apply for all of the point sources under the jurisdiction of a single state agency. Upon approval, the state agency could assume full administration of all point sources within that agency's jurisdiction and responsibility. Such state agency could assume and administer its part of the total NPDES program regardless of whether other state agencies with jurisdiction over other parts of the total program assumed administration of their respective parts.

With respect to a partial and phased permit program covering a major component of the state's NPDES program, the Administrator is authorized to approve such a program if the Administrator determines that the partial program represents a significant and identifiable part of the state's NPDES program such as all major industrial dischargers or all major municipal dischargers, and if the state submits and the Administrator approves a plan for the state to assume administration by phases of the remainder of the state's NPDES program within five years. Under partial and phased assumption, the state would be required to assume all of the program within the specified period of time, but it could do so by assuming some significant part of the program each year up to the end of the specified period. This type of assumption should be helpful to states needing time to acquire resources and to properly forecast the resources needed to assume the rest of the program.

The Committee believes that authorizing partial and phased approval of state permit program will greatly benefit efforts to increase individual states' NPDES program implementation activities. With phased approval, states will be able to gradually assume

responsibility for portions of the NPDES program over a specified period of time leading to full administration of the program by the end of the specified period. This will be particularly helpful to states having resource or other constraints which currently preclude full administration but allow something less than that at this time. Other states will benefit from the provision's authorization for a state to assume permitting authority over one or more discharge categories representing a major part of the state's permit program. For example, states with jurisdiction over point source regulation split among two or more state agencies, could apply for and receive authority to implement the permit program for all categories of discharges under the jurisdiction of one or more of its agencies.

It is the Committee's understanding and intent that, under the language of new subsection 402(n), at least the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas could qualify for partial NPDES program delegation.

Subsection (e) of section 26 of H.R. 8 amends section 402(c) of the Federal Water Pollution Control Act to provide that at state may return or the Administrator may withdraw approval of delegated NPDES program responsibilities. In the case of an approved partial permit program covering administration of a major category of a state's point source discharges, the entire permit program related to that category and being administered by one of the state's departments or agencies must be returned or withdrawn.

Partial programs relating to other categories and being administered by other of the state's departments or agencies, if such is the case, may remain delegated. In the case of an approved partial and phased program covering administration of a major component of a state's NPDES program, any approved phased component must be returned or withdrawn.

SECTION 27—AUDITS

This section provides that for the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under the Act, the Administrator is authorized to enter into non-competitive procurement contracts with state audit organizations. These contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriations Acts.

Section 501(d) of the Act provides that the Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under the Act. The purpose of the amendment is to clarify EPA's authority to negotiate contracts with state audit organizations rather than seeking competitive bids.

SECTION 28—COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

This section amends the definition of "State" in section 502 and "United States" in section 311 to include the Commonwealth of the Northern Mariana Islands. Since the Act was last reauthorized in 1977, a portion of the Trust Territory of the Pacific Islands has

been redesignated as the Commonwealth of the Northern Mariana Islands. Amending the definitions of the terms "State" and "United States" to include the Northern Marianas reflects the new status of the Commonwealth.

SECTION 29—AGRICULTURAL STORMWATER DISCHARGES

This section amends section 502(14) of the Federal Water Pollution Control Act to provide that the term "point source" of pollution does not include agricultural stormwater discharges.

SECTION 30—REPORTS TO CONGRESS

The section directs the Administrator to study and report to Congress on the effect of dams on water quality and the status and performance of state revolving loan funds.

The Administrator, in cooperation with interested states and Federal agencies, is directed to study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of this study, together with recommendations for the control of such impoundment and discharges, shall be submitted to Congress not later than December 31, 1986.

The Administrator is also directed to submit to Congress not later than February 10, 1990, a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 16 of H.R. 8. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

The report under this subsection is to also include an inventory of the facilities that are in significant noncompliance with the enforceable requirements of the Act, an estimate of the cost of construction for any such facilities that require construction to comply with such requirements, an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for loans through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States, an assessment of the operations, loan portfolio, and loan conditions of such Funds, an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of the Act and an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to treatment works constructed with assistance provided under the construction grants program.

SECTION 31—NEWTOWN CREEK, NEW YORK

This section authorizes the Administrator to make a grant to the City of New York to install such additional facilities in, and make such modifications to, the Newton Creek sewage treatment plant as are necessary for the plant to provide secondary treatment. The Federal share of the project is 75 percent of the cost of installing

such facilities and making such modifications. There is authorized to be appropriated such sums as may be necessary to carry out this section for fiscal year beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SECTION 32—SAN DIEGO, CALIFORNIA

Subsection (a) of section 32 states that the purpose of the section is to protect to the economy, public health, environment, surface water, public beaches, and water quality of the city of San Diego, California, and surrounding areas, which are endangered and are being polluted by raw sewage emanating from the city of Tijuana, Mexico.

Subsection (b) provides that, upon approval of the necessary plans and specifications, the Administrator is authorized to make grants to the Secretary of the Army, acting through the Chief of Engineers or any other Federal agency or any other appropriate commission or entity designated by the President. Such grants shall be for construction of a project consisting of treatment works in the city of San Diego, California, to provide primary or more advanced treatment of municipal sewage and industrial waste from the city of Tijuana, Mexico, and a publicly owned treatment works in the city to provide primary or more advanced treatment of municipal sewage and industrial waste for the city of San Diego as may be necessary to meet the objectives of the Federal Water Pollution Control Act.

Subsection (c) provides that as an interim measure, the Administrator shall make grants to the Secretary or such other agency, commission, or entity as may be designated under subsection (b) for the construction of defensive treatment works to protect residents of the city of San Diego and surrounding areas from pollution resulting from any inadequacies or breakdowns in wastewater treatment works and systems in Mexico. The Secretary or such agency, commission, or entity is authorized to construct, operate, and maintain such defensive treatment works in order to accomplish the purposes of this section.

Subsection (d) provides that any treatment works for which a grant is made shall be constructed in accordance with plans developed by the Secretary or such agency, commission, or entity, in consultation with the city of San Diego, and approved by the Administrator to meet the construction standards which would be applicable if such treatment works being constructed under section 201 of the Federal Water Pollution Control Act.

Subsection (e) provides that the project authorized by this section is to provide capacity to provide treatment of municipal sewage and industrial waste for the cities of Tijuana and San Diego.

Subsection (f) provides that all provisions of the Federal Water Pollution Control Act which are applicable to a grant made to a state, municipality, or intermunicipal or interstate agency under section 201(g) of the Act shall apply to a grant made to an agency, commission, or entity for construction of treatment works under subsection (b)(2) of section 32, except that the non-Federal share of

the costs of such construction shall be paid by the city of San Diego and other non-Federal interests.

Subsection (g) provides that construction of the treatment works with respect to municipal sewage and industrial waste from the city of Tijuana shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

Subsection (h) provides that upon application of the city of San Diego, the Administrator may issue a permit under section 402 of the Federal Water Pollution Control Act which modifies the requirements of section 301(b)(1)(B) of such Act to permit the discharge of pollutants for any ocean outfall constructed with Federal assistance under this Act if such pollutants have received primary or more advanced treatment. Any permit issued pursuant to this subsection shall not be effective after December 31, 1993.

Subsection (i) provides that if the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste from the city of Tijuana has capacity which is not longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the city of San Diego.

There is authorized to be appropriated for fiscal years beginning after September 30, 1985, such sums as may be necessary to the Administrator to make grants under this section and such sums as may be necessary to the Secretary, or such other agency, commission, or entity as the President may designate under subsection (b), to carry out this section.

The City of Tijuana, located at the border of California and Baja California Norte, Mexico, presently generates approximately 20 million gallons of sewage per day. In the future, as the City's rapidly expanding population continues to grow beyond the current one million inhabitant level, and as running water is provided to more the City's homes, the amount of sewage emanating from the City will also greatly increase.

Tijuana has neither a reliable sewage collection system nor a fully operating wastewater treatment facility. Consequently, discharges of untreated and partially treated sewage from Tijuana to the ocean at Playas de Tijuana, in addition to sewage seepages across the border, have continually contributed to the contamination of U.S. beaches and territory in the Tijuana River Valley region. This contamination has not only had an adverse economic impact on the U.S. communities in the region, it also poses a severe health hazard to citizens on both sides of the border. In August of 1983, for example, more than 6 million gallons per day of Tijuana sewage were flowing into the ocean near Imperial Beach, California. This forced the closure of Imperial, Silver Strand, and Coronado Beaches where water samples indicated the contamination to be as high as 100 times the level considered safe. Unfortunately, this was not an isolated incident. Beaches north of the border were quarantined for 307 days in 1980, 219 days in 1982, and 309 days in 1983 because of pollution emanating from Tijuana.

Section 32 provides authorization for the construction of wastewater treatment works to provide for the long and short term

sewage treatment needs of both the City of Tijuana, Mexico, and the City of San Diego.

With regard to treatment works authorized for sewage and industrial waste for the City of Tijuana, Mexico, it is fully expected that the Administrator will expeditiously process any application by the City of San Diego for a permit, under section 402 of the Clean Water Act, to modify requirements for secondary treatment in order to discharge through an ocean outfall.

The Committee is aware of the recent commitment of funds by the Government of Mexico, as formalized in the Inter-American Development Bank loan, for the purpose of constructing a permanent treatment facility to handle Tijuana sewage. The Committee commends the efforts of the Mexican Government and is confident of the willingness and ability of Mexico to construct and maintain such facilities.

This bill authorizes construction of a supplemental conveyance system. This system will serve as an integral part of Mexico's permanent facilities and ensure protection of the San Diego border area.

It is the belief of the Committee that a treatment plant on the U.S. side of the border to treat Tijuana sewage will not be necessary; however, such facility shall be constructed if the Administrator, in consultation with the appropriate federal, state and local entities, determines that the Mexican facilities do not sufficiently resolve the problem.

SECTION 33—NACO, ARIZONA

This section provides that, for purposes of protecting the economy, public health, environment, and surface and ground water of the community of Naco, Arizona, which are in danger and are being polluted by raw sewage emanating from the community of Naco, Sonora, Mexico, upon application of the County of Cochise, Arizona, the Administrator of the Environmental Protection Agency shall make grants to such County for construction of a project consisting of a publicly owned treatment works to provide primary or more advanced treatment of not less than 150,000 gallons of untreated sewage emanating from the City of Naco, Sonora, Mexico, and treatment of waste from Naco, Arizona.

Any treatment works for which a grant is made under this section shall be constructed in accordance with plans developed by the County of Cochise, Arizona and approved by the Administrator to meet the construction standards which would be applicable if such treatment works were being constructed under section 201 of the Federal Water Pollution Control Act.

The project authorized by this section shall provide capacity to provide treatment of municipal sewage and industrial water for the City of Naco, Sonora, Mexico and the community of Naco, Arizona.

All provisions of the Federal Water Pollution Control Act which are applicable to grants made under section 201(g) of such Act shall apply to grants made under this section to provide treatment of municipal sewage and industrial waste for the community of Naco, Arizona.

The Federal share of the cost of construction of the treatment works to provide treatment of municipal sewage and industrial waste for the City of Naco, Sonora, Mexico shall be at full Federal expense less any costs paid by the Government of Mexico as a result of agreements negotiated with the United States.

If the treatment works constructed under this section to provide treatment for municipal sewage and industrial waste for the City of Naco, Sonora, Mexico, has capacity which is no longer necessary to provide such treatment, such capacity may be used to provide treatment for municipal sewage and industrial waste for the community of Naco, Arizona.

For purposes of this section, the terms "construction" and "treatment works" have the meanings such terms have under section 212 of the Federal Water Pollution Control Act.

There is authorized to be appropriated to the administrator \$2,000,000 to make grants under this section for fiscal years beginning after September 30, 1985.

Since early 1977, the United States has negotiated with Mexico regarding immediate and long-term solutions to the problems of chronic sewage discharges into Greenbush Draw from the Naco, Sonora treatment facilities. The City of Bisbee and County of Cochise have supplied equipment and manpower for repairs on many occasions, with funding from the International Boundary and Water Commission. However, because of frequent damage from heavy rains, inadequate maintenance of facilities, increased sewage load, and the strained economic conditions in Naco, Sonora, the frequency of sewage overflow from the treatment ponds and manholes in Naco, Sonora has increased in the last three years.

The groundwater production facilities for Bisbee, Arizona which are owned and operated by Arizona Water Company, are located in Greenbush Draw, approximately one mile downstream from the international boundary. The sewage discharge from Naco, Sonora threatens to contaminate the aquifer which supplies all of the City of Bisbee's drinking water. The sewage load at Naco, Sonora is currently 132,000 gallons per day; this load was flowing unchecked into Greenbush Draw in December 1983. As an emergency measure to prevent this sewage from reaching the Arizona Water Company well field, a diversion and impoundment were constructed on private property in Naco, Arizona again using funding from the International Boundary and Water Commission. This holding pond is unacceptable as a long-term measure and is not adequate to retain sewage flows in the event of heavy seasonal rains which are typical of southern Arizona nor to eliminate the threat of groundwater contamination.

SECTION 34—LIMITATION ON DISCHARGE OF RAW SEWAGE BY NEW YORK CITY

This section places limitations on the discharge of raw sewage by the City of New York.

Subsection (a) provides that if the wastewater treatment plant identified in the consent decree entered into by New York City and EPA as the North River plant has not achieved advanced preliminary treatment as required under the terms of the consent

decree by August 1, 1986, the city of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from drainage area during the 12-month ending on the earlier of the date on which such plant becomes operational or March 15, 1986, (as determined by the Administrator), except as provided in subsection (b)

It also provides that if the wastewater treatment plant identified in the consent decree as the Red Hook plant has not achieved advanced preliminary treatment as required under the terms of the consent decree by August 1, 1987, the City of New York shall not discharge raw sewage from the drainage area of such plant (as defined in the consent decree) into navigable waters after such date in an amount which is greater for any 30-day period than an amount equal to 30 times the average daily amount of raw sewage discharged from such drainage area during the 12-month period ending on the earlier of the date on which such plant becomes operational or March 15, 1987, (as determined by the Administrator), except as provided in subsection (b).

Subsection (b) provides for waivers of the requirements of subsection (a). In the event of any significant interruption in the operation of the North River plant or the Red Hook plant caused by an event described in subparagraph (A), (B), or (C) of paragraph (5) occurring after the applicable deadline established under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to such plant, but only to such extent and for such limited period of time as may be reasonably necessary for the City of New York to resume operation of such plant.

In the event that the volume of precipitation occurring after the applicable deadline established under subsection (a) causes the discharge of raw sewage to exceed the limitation under subsection (a), the Administrator shall waive the limitation of subsection (a) with respect to either or both such plants, but only to such extent and for such limited period of time as the Administrator determines to be necessary to take into account the increased discharge caused by such volume of precipitation.

In the event that an increase in discharges from the North river drainage area constituting a violation of the discharge limitations is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1986, is not responsible for such violation, the Administrator shall waive the limitation, but only to such extent and for such limited period of time as the Administrator determines to be reasonably necessary to take into account such random or seasonal variation.

In the event that an increase in discharge from Red Hook area constituting a violaton of the discharge limitations is due to a random or seasonal variation, and that any sewer hookup occurring, or permit for a sewer hookup granted, after July 31, 1987, is not responsible for such violation, the Administrator shall waive the limitation of subsection (a)(2), but only to such extent and for such limited period of time as the Administrator determines to be

reasonable necessary to take into account such random or seasonal variation. The Administrator shall extend the deadlines in subsection (a) to such extent and for such limited period of time as may be reasonably required to take into account any act of war, unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which would not have been prevented or avoided by the exercise of due care or foresight, or other circumstances shall not include the unavailability of Federal funds under section 201 of the Federal Water Pollution Control Act, the unavailability of funds from the City of New York or the State of New York, or a policy decision made by the City of New York or the State of New York to delay the achievement of advanced preliminary treatment at the North River plant or Red Hook plant beyond the applicable deadline set forth in subsection (a).

Subsection (c) provides that any violation of subsection (a) shall be considered to be a violation of section 301 of the Federal Water Pollution Control Act, and all provisions of such Act relating to violations of such section 301 shall apply.

Subsection (d) provides that, for purposes of this section, the term "consent decree" means the consent decree entered into by the Environment Protection Agency, the City of New York, and the State of New York, on December 30, 1982, relating to construction and operation of the North River and Red Hook wastewater treatment plants.

Subsection (e) directs the Administrator to work with the City of New York to eliminate the discharge of raw sewage by such city at the earliest practicable date.

Subsection (f) provides that nothing in this section shall be construed as modifying the terms of the consent decree.

Subsection (g) states that it is the sense of Congress that the Administrator should not agree to any further modification of the consent decree with respect to the schedule for achieving advanced preliminary treatment.

Subsection (h) establishes termination dates. The provisions of this section shall remain in effect with respect to the North River drainage area until such time as the North River plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

The provisions of this section shall remain in effect with respect to the Red Hook drainage area until such time as the Red Hook plant has achieved advanced preliminary treatment (as defined in the consent decree) for a period of six consecutive months.

Subsection (i) directs the Administrator to establish and carry out a program within available funds to implement the monitoring activities which may be required under subsection (a).

Subsection (j) directs the Administrator to establish the methodologies, data base, and any other information required for making determinations for the North River drainage area by July 1, 1986, and for the Red Hook drainage area by July 31, 1987, unless the termination provisions of subsection (h) have been satisfied.

Subsection (k) provides that if the Administrator finds that a violation of subsection (a) has occurred, the Administrator shall also determine, within 30 days after such finding, whether a waiver pro-

vision of subsection (b) applies. If the Administrator requires information from the City of New York in order to determine whether a provision of subsection (b) applies, the Administrator shall request such information. If the City of New York does not supply the information requested by the Administrator, the Administrator shall determine that subsection (b) does not apply. The City of New York shall be responsible only for such expenses as are necessary to provide such requested information. Enforcement action pursuant to subsection (c) shall be commenced at the end of such 30 days unless a provision of subsection (b) applies.

This section in no way modifies the obligation of the City of New York to achieve secondary treatment as required by the Federal Water Pollution Control Act and any consent decrees entered into by the Environmental Protection Agency, the State of New York, the City of New York, and other parties, or any compliance orders or schedules imposed by the Administrator. It does not permit the indefinite discharge of raw sewage at the March 15, 1986 level. Rather, it places a limitation on the amount of discharge of raw sewage which may occur as the City continues its efforts to achieve full secondary treatment of all of its sewage.

SECTION 35—DEER ISLAND TREATMENT PLANT, MASSACHUSETTS

This section authorizes and directs the Administrator of the Environmental Protection Agency to make grants to the Metropolitan District Commission, Massachusetts, for a project to undertake emergency improvements at the Deer Island Waste Water Treatment Plant in Boston, Massachusetts. The Federal share of the project shall not exceed 75 percent of the cost of carrying out the improvements. There is authorized to be appropriated to carry out this section \$10,000,000 per fiscal year for each of the fiscal years 1986, 1987 and 1988.

SECTION 36—OAKWOOD BEACH AND RED HOOK PROJECTS, NEW YORK

This section provides that, notwithstanding any provision of the Federal Water Pollution Control Act, the Administrator of the Environmental Protection Agency shall pay, to the extent provided in appropriation Acts, in the same proportion as the Federal share of other project costs, all expenses for the relocation of facilities for the distribution of natural gas with respect to the entire wastewater treatment works known as the Oakwood Beach (EPA Grant Number 360932) and Red Hook (EPA Grant Number 360394) projects, New York. There is authorized to be appropriated for fiscal years beginning after September 30, 1985, not to exceed \$9,000,000 to carry out the section.

SECTION 37—CHIPPEWA TOWNSHIP, PENNSYLVANIA

This section provides that, in order to protect the public health, environment, and water quality endangered by the destruction of the Chippewa Township, Pennsylvania, sewage treatment facility and the resultant raw sewage discharge into Brady's Run, Pennsylvania, the Administrator of the Environmental Protection Agency is directed to remove the raw sewage.

The explosion that destroyed the Chippewa sewage treatment facility led to the discharge of millions of gallons of raw sewage into Brady's Run and the one mile section of the Beaver River, from where it enters the Ohio River upstream to Brady's Run.

Section 37 requires the Administrator to remove the sewage deposited in this reach of the Beaver River and Brady's Run.

SECTION 38—DES MOINES, IOWA

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the City of Des Moines, Iowa, for construction of the Central Sewage Treatment Plant component of the Des Moines, Iowa, metropolitan area project. The Federal share of such project shall be 75 percent of the cost of construction. There is authorized to be appropriated to carry out this section not to exceed \$85,000,000 for fiscal years beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under title II of the Federal Water Pollution Control Act.

SECTION 39—WASTEWATER RECLAMATION DEMONSTRATION

This section authorizes the Administrator of the Environmental Protection Agency to make a grant to the San Diego Water Reclamation Agency, California, to demonstrate and field test for public use innovative processes which advance the technology of wastewater reclamation and which promote the use of reclaimed wastewater. There is authorized to be appropriated not to exceed \$3,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

SECTION 40—BOSTON HARBOR AND ADJACENT WATERS

This section directs the Administrator to make grants to the Massachusetts Water Resource Authority for purposes of assessing the principal factors having an adverse effect on the environmental quality of Boston Harbor and its adjacent waters, developing and implementing a management program to improve the water quality of such Harbor and waters, and constructing necessary wastewater treatment works for providing secondary treatment for the areas served by such authority.

The Federal share of these projects shall not exceed 75 percent of the cost of construction thereof.

There is authorized to be appropriated \$20,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990. Such sums shall be in addition to and not in lieu of any other amounts authorized to be appropriated under Title II of the Federal Water Pollution Control Act.

SECTION 41—TREATMENT WORKS IN WASHINGTON STATE

This section authorizes the Administrator to make grants to the sewage treatment authorities discharging into Puget Sound and adjacent marine waters, including the Strait of Juan de Fuca and Bellingham Bay, to construct necessary treatment works for pro-

viding secondary treatment for the areas served by such authorities. The Federal share of such projects shall not exceed 75 percent of the cost of construction thereof.

There is authorized to be appropriated \$250,000,000 to carry out this section for fiscal year beginning after September 30, 1985, which shall be in addition to and not in lieu of any other amounts authorized to be appropriated under Title II of the Federal Water Pollution Control Act.

SECTION 42—IMPROVEMENT PROJECTS

Subsection (a) of Section 42 provides that the Administrator shall make a grant of \$3,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal year 1986 to the city of Avalon, California, for improvements to the publicly owned treatment works of such city.

Subsection (b) provides that the Administrator shall make grants from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of Pennsylvania for fiscal year 1986—

(1) to Walker Township, Pennsylvania, for developing a collector system and connecting its wastewater treatment system into the Huntingdon Borough, Pennsylvania, sewage treatment plant, and

(2) to Smithfield Township, Pennsylvania, for rehabilitating and extending its collector system.

Subsection (c) provides that notwithstanding section 201(g)(1) of the Federal Water Pollution Control Act or any other provision of law, the Administrator shall make a grant of \$250,000 from funds allotted under section 205 of such Act to the State of Kentucky for fiscal year 1986 to the city of Taylor Mill, Kentucky, for the repair and reconstruction, as necessary, of the publicly owned treatment works of such city.

Subsection (d) provides that the Administrator shall make a grant of \$27,000,000 from funds allotted under section 205 of the Federal Water Pollution Control Act to the State of California for fiscal years beginning after September 30, 1985, to the city of Watsonville, California, for improvements to the wastewater treatment and disposal facilities of such city.

SECTION 43—STUDY OF REGULATION OF DE MINIMUS DISCHARGES

This section directs the Administrator to study the feasibility and desirability of eliminating the regulation of discharges of pollutants into the navigable waters in amounts which, in terms of volume, concentration, and type of pollutant, are not significant. A report, with recommendations, is to be submitted to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 8.

SECTION 44—STUDY OF EFFECTIVENESS OF INNOVATIVE AND ALTERNATIVE PROCESSES AND TECHNIQUES

This section directs the Administrator of the Environmental Protection Agency to study the effectiveness on waste treatment of in-

novative and alternative wastewater treatment processes and techniques which have been utilized in treatment works constructed under the Act. In conducting the study, the Administrator is to compile information, by state, on the types of such processes and techniques utilized and on the number of facilities constructed with such processes and techniques, and a description of such processes and techniques which have not performed to design standards. The Administrator must also determine which states have not obligated the full amount set aside for innovative and alternative facilities constructed with such processes and techniques and the reasons therefor. The Administrator is to submit a report on this study to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works not later than two years after the date of enactment, along with recommendations for providing more effective incentives for innovative and alternative wastewater treatment processes and techniques.

SECTION 45—WATER QUALITY IMPROVEMENT STUDY

Subsection (a) of this section directs the Administrator to study the water quality improvements which have been achieved by application of best available technology. The study must include an analysis of the effectiveness of, and the costs and benefits associated with, application of best available technology and must also include an analysis of methods of improving the Nation's water quality program and its effectiveness. Subsection (a) requires the Administrator, in analyzing methods of improving the water quality program, to study site-specific levels of treatment which will achieve the water quality goals of the Federal Water Pollution Control Act in a cost effective manner.

Subsection (b) requires the Administrator, within two years of the date of enactment of H.R. 8, to submit a report on the results of the study, together with recommendations for improving the Nation's water quality programs and its effectiveness, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

SECTION 46—STUDY OF TESTING PROCEDURES

This section directs the Administrator to study the testing procedures for analysis of pollutants. The study shall include, but is not limited to, an analysis of the adequacy and standardization of testing procedures. In conducting the analysis of the standardization of such procedures, the Administrator is to consider the extent to which these procedures are consistent with comparable procedures established under other Federal laws. A report on the results of this study is to be submitted within one year, together with recommendations for modifying testing procedures, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works.

The Administrator is also directed, biennially after the date of submission of the report on testing procedures, to conduct a state-of-the-art review of the testing procedures for the analysis of pollutants for the purpose of determining the adequacy and effectiveness of such procedures and, based on the results of such review, to

submit to the Committees recommendations for modifying testing procedures to improve their effectiveness.

SECTION 47—STUDY OF PRETREATMENT OF TOXIC POLLUTANTS

This section directs the Administrator of the Environmental Protection Agency to conduct a study and make a report with recommendations concerning a number of pretreatment-related issues.

Subsection (a) directs the Administrator to study the adequacy of data on environmental impacts of toxic industrial pollutants discharged through publicly owned treatment works; the extent that secondary treatment by these treatment works removes toxic pollutants; the capability of publicly owned treatment works to grant pretreatment removal credits authorized under section 307(b)(1) of the Federal Water Pollution Control Act; possible alternative regulatory strategies for protecting the operations of publicly owned treatment works from industrial discharges, including an evaluation of how effective each strategy might be in achieving the goals of the Water Pollution Control Act and the Federal Water Pollution Control Act, and the adequacy under each of the strategies studied of Federal, state and local resources to establish, implement, and enforce multiple pretreatment limits for toxic pollutants.

Subsection (b) requires the Administrator to submit a report on the study performed under subsection (a), along with recommendations for improving the effectiveness of pretreatment requirements, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within two years of date of enactment of H.R. 8.

Section 47 requires the Administrator to study the effectiveness of the National Pretreatment Program. This study is not intended to determine the need for pretreatment or in any way to delay ongoing program implementation. Rather, the study should be used to update and expand information available to the Agency on such matters as the impact on publicly owned treatment works of industrial discharges and the pollution removal effectiveness of publicly owned treatment works technology. In addition, the study should also be used to evaluate the effectiveness—both in terms of pollution removal and cost—of industrial pretreatment controls.

Section 47(a)(3) requires the Administrator to study the capability of publicly owned treatment works to revise pretreatment requirements under section 307(b)(1) of the Federal Water Pollution Control Act. The Committee intends that EPA focus particular attention on the extent to which EPA's pretreatment removal credits program is presently effectuating the Congressional intent behind section 307(b)(1). Congress added the credits system to the Act in 1977 because of its concern that EPA's categorical pretreatment standards could result in costly redundant treatment by industry and publicly owned treatment works. The Committee also intends that, in implementing section 47(a)(3), the Administrator shall examine the capability of publicly owned treatment works to establish and enforce requirements more stringent than or different from national categorical standards.

The Committee's reference in section 43(a)(4) to possible alternative regulatory strategies is meant to include, among other things, consideration of sludge quality in evaluating strategy effectiveness. Section 43(a)(5)'s reference to adequacy of . . . resources is meant to include evaluation of technical expertise and availability of analytical methods as well as financial and staffing level evaluations.

SECTION 48—SULFIDE CORROSION STUDY

This section provides that, in order to protect the Federal and other investment in treatment works, the Administrator shall conduct a study of the problem of the corrosive effects of sulfides in collection and treatment systems, the extent to which the uniform imposition of categorical pretreatment standards will exacerbate this problem, and the range of available options to deal with the effects.

The study required is to be conducted in consultation with the Los Angeles City and County sanitation agencies which have observed examples of corrosion, probably caused by sulfides. The Administrator shall submit a report on the results of the study, together with recommendations for measures to reduce the corrosion of treatment works, to the House Committee on Public Works and Transportation and the Senate Committee on Environment and Public Works within one year of the date of enactment of H.R. 8. There is authorized to be appropriated \$2,000,000 to carry out this section for fiscal years beginning after September 30, 1985.

In recent years in Southern California, it has become apparent that sulfide corrosion of concrete sewers and wastewater treatment facilities is creating severe damages. The causes of sulfide corrosion of concrete structures include high strength sewage, high temperature, acidic wastewater, lack of aeration of sewage and low cleaning velocities in the sewer system. The climatic conditions in Southern California and the use of sanitary sewers which do not accept rainfall tend to promote conditions causing sulfide corrosion. The lack of rainfall tends to eliminate the periodic flushing and cleaning of the sewer slimes which create sulfides. In less desert-like climates this periodic flushing of sewers tends to reduce sewer corrosion problems.

The existence of sulfides in large concrete sewers throughout the Los Angeles basin results in the formation of sulfuric acid which corrodes the sewers and creates the potential for sewer collapse.

It is necessary to perform an extensive evaluation of the interactions of the many factors that may be causing sulfide corrosion of sewerage structures. The interrelated remedial effects of the periodic cleansing of concrete sewers, the effectiveness of adding chemicals that eliminate sewer slimes, the effect of in-sewer aeration of wastewater and other remedial measures need to be properly evaluated. This amendment will provide for funding for the Administrator to work cooperatively with the Los Angeles County sanitation agencies to develop methods to deal with this problem.

SECTION 49—PULP MILL STUDY

This section directs the Administrator of the Environmental Protection Agency, in consultation with the State of Alaska, to conduct

and prepare a study-report which shall determine the feasibility of resolving the air pollution control, solid waste disposal, water quality standards compliance, and energy impacts associated with the achievement of best practicable technology under section 301 of the Federal Water Pollution Control Act with respect to the Alaska Lumber and Pulp Company, located at Sitka, Alaska (NPDES permit numbered AK000053-1).

The Administrator shall submit such study-report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than 18 days after the date of enactment of H.R. 8.

SECTION 50—STUDY OF RAINFALL INDUCED INFILTRATION INTO SEWER SYSTEMS

This section directs the Administrator to study problems associated with rainfall induced infiltration into wastewater treatment sewer systems. Not later than one year after the date of enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study, along with recommendations on reasonable methods to reduce such infiltration and on regulatory mechanisms to address special problems associated with increased flows from such systems resulting from such infiltration.

SECTION 51—STUDY OF PH IN DISCHARGES FROM MINING OPERATIONS

This section directs the Administrator to study effluent limitations as they relate to pH in discharges from mining operations. Not later than one year after the date of the enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study along with recommendations as to the feasibility of permitting modifications of such effluent limitations to permit lower pH in such discharges than is otherwise required.

Concerns have been expressed that the EPA developed effluent limits for pH applicable to coal mining operations may be in some instances incompatible with the tolerance levels of established aquatic life within and surrounding the permit area of the coal mine, especially in the Appalachian region.

For the coal mining industry, the Administrator has assigned a pH effluent limit for Best Available Technology and new sources between 6 and 9. Some feel, however, that this range may be incompatible with the natural characteristics of the receiving streams and may fail to take into consideration the water quality baseline conditions.

The Committee has been informed that the scientific community often prescribes "natural" rainwaters as having a pH value significantly below pH 6 and that many of the streams in Appalachia exhibit natural acidity below this pH 6 level. The majority of mining operations in Appalachian coal fields occurs in the headwaters of streams and in these areas, especially those with shallow groundwater characteristics, seeps and springs have a naturally low pH value. A substantial collection of baseline stream data for permitting purposes exists and can be used by the EPA to assist in its determination as to the appropriateness of adjusting the lower

boundary of the pH range for the coal mining industry, either nationally, regionally or on a site specific case-by-case basis.

The study requested by this section should take into account these items and be submitted to the Congress, along with any recommendations, not later than one year after date of enactment of this Act.

SECTION 52—STUDY OF POLLUTION IN LAKE PEND OREILLE, IDAHO

The Administrator is directed to conduct a comprehensive study of the sources of pollution in Lake Pend Oreille, Idaho, and the Clark Fork River and its tributaries, Idaho, Montana, and Washington, for the purpose of identifying the sources of such pollution. In carrying out this provision, the Administrator is to consider existing studies, surveys, and test results concerning such pollution.

Not later than one year after the date of the enactment of H.R. 8, the Administrator is to submit to Congress a report on the results of the study conducted under this section together with any recommendations.

SECTION 53—LIMITATION ON PAYMENTS

This section provides that no payments may be made under H.R. 8 except to the extent provided in advance in appropriation Acts.

COMPLIANCE WITH CLAUSE 2(1) OF RULE XI OF THE RULES OF THE HOUSE OF REPRESENTATIVES

(1) With reference to clause 2(1)(3)(A) of rule XI of the House of Representatives, the Subcommittee on Investigations and Oversight did not hold hearings on the specific subject matter of the legislation.

That Subcommittee has, however, conducted investigations of the implementation of various aspects of the Federal Water Pollution Control Program over the past several years, and has issued a number of reports on these matters.

The Subcommittee on Water Resources held hearings on the bill.

(2) With respect to clause 2(1)(3)(B) of rule XI of the House of Representatives, H.R. 8, as reported, does not provide new budget authority or increase tax expenditures. Accordingly, a statement pursuant to section 308(a) of the Congressional Budget Act is not required.

(3) With reference to clause 2(1)(3)(C) of rule XI of Rules of the House of Representatives, the Committee has received a report prepared by the Congressional Budget Office under section 403 to the Congressional Budget Act. That report is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 18, 1985.

Hon. JAMES J. HOWARD,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 8, the Water Quality Renewal Act of 1985.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 8.
2. Bill title: Water Quality Renewal Act of 1985.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, May 28, 1985.

4. Bill purpose: H.R. 8 would reauthorize water quality programs administered by the Environmental Protection Agency (EPA), including the construction grants program, through fiscal year 1990. The bill would require the establishment and implementation of a new non-point source control program as well as a program to control individual sources of toxic contaminants in navigable waters.

Authorization for grants to aid states in capitalizing revolving funds would begin at a level of \$0.6 billion a year in 1986 through 1990, would rise to \$2.4 billion in 1991, and then gradually drop to \$0.6 billion by 1994.

Finally, H.R. 8 would require EPA to perform studies and produce reports on issues such as de minimis discharges and sulfide corrosion. Demonstration projects, feasibility studies, and additional grants for water quality-related projects would be authorized for specific sites. Authorized appropriations for such activities would total an estimated \$1.1 billion through 1990.

5. Estimated cost to the Federal Government:

(By fiscal years, in million of dollars)

	1985	1986	1987	1988	1989	1990
Estimated authorization level	625	4,615	3,704	3,704	3,694	3,694
Less: Existing appropriation	216					
Net additional authorization level	409	4,615	3,704	3,704	3,694	3,694
Estimated outlays	272	1,206	1,699	2,577	3,174	3,378

An additional \$7.5 billion in outlays would occur after fiscal year 1990.

H.R. 8 would establish an individual control strategy program for toxic pollutants. States (or the EPA, if states fail to act) would be required to develop individual control strategies for all navigable waters that are not expected to meet standards for toxic discharges. Each strategy would be promulgated as a final regulation that would then be implemented by modifying existing discharge permits. Those 37 states that have been delegated permitting authority would bear the cost of implementation. In all other cases, EPA would bear this expense. It is likely that the costs of developing, reviewing, and implementing the individual control strategies could be substantial, but with the information available it is not possible to estimate the costs to the Federal Government.

The costs of this bill fall within budget function 300.

Basis of estimate: For purposes of this estimate, it is assumed that H.R. 8 will be enacted during fiscal year 1985 and that the full sums authorized will be appropriated for each fiscal year. The authorization levels are those specified in the bill, plus estimated 1986 authorizations totaling \$550 million for the Newtown and San Diego projects. Money for the Chippewa Township project was awarded in fiscal year 1984, and no additional funds are expected to be required. The 1985 authorization represents the difference between the amounts authorized in the bill for 1985 and appropriations to date for those programs with new 1985 authorizations. The 1985 authorization level also includes \$25.3 million for specific projects authorized in Section 26 that have no effective date specified. Outlays are estimated on the basis of historical spending patterns and information obtained from the EPA.

6. Estimated cost to State and local governments: CBO has not completed its estimate of the costs to state and local governments, which could be substantial. This estimate will be transmitted separately at a later date.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Deb Reis.

10. Estimate approved by: Robert A. Sunshine, for James L. Blum, Assistant Director for Budget Analysis.

(4) With reference to clause (2)(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Government Operations pertaining to this subject matter.

(5) With reference to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the following information is provided: The effect of carrying out H.R. 8, as reported, should be negligible with respect to prices and costs.

COST OF LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires a statement of the estimated costs to the United States which would be incurred in carrying out H.R. 8, as reported, in Fiscal Year 1985 and each of the following five years. However, under paragraph (d) of clause 7 its provisions do not apply when the Committee has received a timely report from the Congressional Budget Office.

COMMITTEE ACTION AND VOTE

The Committee, in compliance with rule XI(2)(1)(2)(A) of the Rules of the House of Representatives, reports favorably the bill H.R. 8, as amended.

The Committee ordered the bill reported by voice vote.

SUPPLEMENTAL VIEWS OF CONGRESSMAN ARLAN STANGELAND

I commend the efforts of the Committee on Public Works and Transportation in developing the Water Quality Renewal Act of 1985. H.R. 8 is a bill that provides a balanced and comprehensive reauthorization of one of the Nation's most important environmental laws, the Federal Water Pollution Control Act, also referred to as the Clean Water Act. Through the able leadership of Chairman Howard and the Ranking Republican Member, Gene Snyder, the Committee has developed a strong and responsible bill, one that is sensitive to the needs of the environment as well as the need for fiscal restraint. Considerable credit for this achievement goes to the tireless dedication of the Chairman of the Subcommittee on Water Resources, Bob Roe, whose spirit of cooperation and compromise has helped make this bill possible. It is a bill that I am proud to support.

While I support the bill in its totality, I also believe that there is one area concerning which the Committee could have done more to improve the Act's flexibility and its overall ability to ensure efficient and effective water pollution control. I believe that the Act should be amended to allow, under limited and protective conditions, certain municipalities to operate under a local alternative to the nationally mandated standards pursuant to Section 307 of the Act for pretreatment of pollutants discharged into publicly owned treatment works.

The national categorical pretreatment program, called for under Section 307 of the Act, is appropriate for the majority of communities in the United States. At the same time, there are cities that can and have developed and are operating their own pretreatment programs very successfully. These cities should be recognized for their excellent performance and allowed to continue to operate under their different but environmentally protective local pretreatment programs.

During Subcommittee markup, I offered an amendment which provided a limited number of cities an opportunity to operate under equivalent pretreatment programs if they could adequately show to the satisfaction of the Administrator of the Environmental Protection Agency that implementation of the city's locally developed program was at least as effective and environmentally protective as that required by the national categorical pretreatment standards. I believe that, although the amendment failed to win Subcommittee approval, the amendment is one that is entitled to further consideration by my colleagues.

Under my amendment, in order to proceed with an equivalency option, a local treatment program would have to control indirect industrial dischargers to avoid pass-through of pollutants, prevent interference with treatment works operations, and preserve sludge

disposal options. Before being approved for operation, the publicly owned treatment works (POTW) would have to be achieving secondary treatment and would have to show that it had adequate funding and resources—technical, legal, and administrative—to implement the local program.

POTWs that are not inclined or do not have the resources to develop and maintain a local program would continue to be required to comply with the national categorical standards.

The current EPA pretreatment program, centered on national technology-based pretreatment standards, does not properly take into account whether all of the treatment required by the national standards is needed in every case. This can, and often does, result in costly, redundant and wasteful treatment by industry and POTWs.

I believe that, as a general rule, local conditions are handled best by local entities developing locally-responsive programs. Because many water quality problems are uniquely site specific and cannot readily be solved by uniform national standards, I believe that functioning equivalent, locally-controlled pretreatment programs should be able to direct resources to particular site-specific problems rather than to treatment for treatment's sake.

In 1977 Congress amended the Act to provide that, if a POTW were capable of removing pollutants without causing problems with its operations, industrial dischargers into the POTW should be given credit for such removals. In response to this mandate, EPA developed the present removal credit regulations, which were supposed to alleviate the problem of redundant treatment by POTWs and industrial dischargers. However, the regulations are so complex and restrictive that many POTWs have not applied for those removal credits. Industrial dischargers must therefore often continue to install treatment technology and meet pretreatment limits even though a POTW may remove some or all of the pollutants and even though the environment and the operation of the POTW could be protected as well or better under a different locally developed program. Implementation of a locally controlled pretreatment program would allow for reasonable resolution of this problem. In most cases the national program will be used. The efficiency and savings of local control, however, make a local option program desirable in certain situations.

I want to stress that the approach reflected in my amendment is not a proposal promoted solely by industry. It is also strongly supported by the States, cities, and sewage treatment agencies throughout the Nation. During the consideration of Clean Water Act amendments in the 98th Congress, a local pretreatment equivalency program was strongly supported by the Association of Metropolitan Sewerage Agencies, the United States Conference of Mayors, and the National League of Cities.

Under my amendment, a rigorous monitoring program would be required for every local system obtaining the authority provided. The monitoring is envisioned as going beyond current Federal law and would be specifically designed to advance the state of the art of biological monitoring and the development of toxicity data for receiving streams.

The proposal would not eliminate any existing enforcement authority. Both the local and State governments have undiminished enforcement authority over industrial users of a POTW through the requirements of this proposal and through the existing provisions of the Act. Federal and citizen enforcement is available through Section 309(f), 505(a) and (f), Section 307(d) and EPA's general pretreatment regulations.

In summary, I believe that it is unwise to require compliance with Federal categorical standards when other, perhaps less costly, methods are available which are just as effective in achieving the goals of the Act. Furthermore, a rigid approach may inhibit the development of new initiatives that could greatly improve water quality if greater flexibility were allowed to be employed by the Act. Accordingly, H.R. 8 should be further amended to authorize a demonstration program for local pretreatment programs which achieve pretreatment at least equivalent to that required under national standards but which employ a method of pretreatment which is different from the categorical pretreatment standards mandated under Section 307(b) of the Act.

ARLAN STANGELAND.

SUPPLEMENTAL VIEWS ON H.R. 8

We strongly commend the Committee and particularly its leadership, Committee Chairman James J. Howard, Water Resources Subcommittee Chairman Robert A. Roe, and Ranking Members Gene Snyder and Arlan Stangeland, on a very strong environmental bill, and urge its passage by the House.

We believe, however, that several further provisions should be incorporated into this year's amendments to the Federal Water Pollution Control Act, to cement the environmental gains of the Act's first 13 years, and to continue on course toward progress in water pollution control.

ANTI-BACKSLIDING

"Backsliding," or the relaxation of requirements when a permit is reissued, renewed or modified, is a major concern not addressed in this bill. There may be some valid reasons for relaxing a permit's requirements, but we believe these should be carefully spelled out in law. There is little if any justification for turning off, disconnecting, or otherwise rendering less effective, treatment which is working well, at reasonable costs. We are particularly concerned by recent attempts to reallocate, and to allow the sale, purchase and trading of, wasteload allocations. The effect of such procedures would be to freeze water quality at the standard, the lowest quality allowed by law. This is clearly counter to the intent of the Act, which states that, except under conditions spelled out in the Act, "... the discharge of any pollutant by any person shall be unlawful," and would turn a prohibition of polluting the public's water into a private property right to pollute.

CITIZEN SUITS

Since enactment of the Clean Water Act and other environmental legislation in the early 1970's, citizen participation has played a vital part in enforcing and applying federal law. The bill as drafted (Sec. 25) would give EPA new authority to assess administrative civil penalties without going to court. However, if EPA chose to exercise this authority, citizens would be precluded from seeking legal redress in cases of violations of the Clean Water Act. Prompt action on violations of the Act would be fostered by allowing citizen suits when violations occur. The bill would be improved if it did not include language limiting citizen suits when violations occur.

FUNDAMENTALLY DIFFERENT FACTORS VARIANCES

Variances from uniform national standards for production processes which are fundamentally different from those evaluated during the rulemaking process are a creature of the Environmental

Protection Agency, recently ratified by the Supreme Court (*Chemical Manufacturers Ass. v. Natural Resources Defense Council, Inc.* No. 83-1013—U.S. Feb. 27, 1985). They have never received Congressional approval or legislative sanction.

It is thus appropriate for Congress to provide the direction needed for this procedure. We are pleased that H.R. 8 contains an FDF variances section (Sec. 20, Variances from the Application of Effluent Limitations), but we believe the provision could be strengthened in several ways.

The final language should establish a firm deadline for EPA to act on a variance application. It should make clear that the applicant makes his application, or goes to court, on his own time; and that if he is turned down, he must comply by the same date as his competition. The final language should apply to all standards, not just to those issued after this bill is enacted. Costs should not be a consideration in granting a waiver. Finally, any waiver should not allow any more adverse non-water quality environmental impact than would be produced without the variance.

WATER QUALITY VARIANCES

Section 301(g) authorizes variances from BAT for nonconventional pollutants under certain conditions. According to EPA, there are some 55,000 identified compounds that could qualify as nonconventionals, most of which have very little scientific data relating to environmental impacts. We urge consideration of the Administration's proposed amendment to 301(g), which would limit water quality variances to pollutants to which EPA can judge the environmental harm, thereby avoiding variances for many highly toxic pollutants whose environmental impacts have not been adequately studied.

FEEES

It is extremely expensive for EPA and the States to process waiver applications. We believe there should be a provision authorizing the collection of these costs from applicants.

SECTION 402 PERMIT REQUIREMENTS FOR LOG TRANSFER FACILITIES

The Committee wisely declined to exempt discharges from log transfer facilities from permit requirements under section 402 of the Act. We urge continued resistance to this exemption during further consideration of clean water legislation.

It has been argued that mandating a 402 permit duplicates existing requirements that such operations obtain permits under Section 404. We do not believe that dischargers should be required to obtain duplicative and unnecessary permits. However, EPA and the Army Corps of Engineers have authority under existing law to eliminate duplication between Section 404 and Section 402 permits. The purposes of these two sections are fundamentally different: 404 permits apply to the dredge and fill operations in constructing log dumps, and 402 permits apply to the pollutant discharges from the dumps after they are built. Where duplication exists, EPA and the Corps already have the authority to eliminate it.

For at least a decade, federal courts have considered log bark to be a "pollutant" requiring a permit under Section 402 (*U.S. v. Kennebec Log Driving Co.*, 399 F. Supp. 754 D. Me. 1975, aff'd, 530 F. 2d. 446 1st Cir. 1976). The federal court in Alaska followed this case in upholding the requirement that bark and other pollutants from log dumps must be regulated under the NPDES Section 402 permit program (*Angoon v. Marsh*, J83-001, 1983). EPA agreed with the court and did not appeal the decision.

Studies by federal and state agencies indicate that log dumps do degrade water quality and reduce marine life and that log debris is highly toxic. We feel that retention of existing language in the bill is important to prevent the serious environmental damage which can be caused by log dumps.

STORM WATER DISCHARGES

Storm water is one of the most knotty problems with which the Environmental Protection Agency and others have wrestled. We believe that storm water associated with industrial areas must be regulated by permit. However, we recognize that there is at least an argument to be made, from the standpoint of resource drain on both permitting agencies and potential applicants, that certain other storm water discharges, such as those composed entirely of storm water from residential, commercial and other non-industrial sites, not require permits.

We approach the issue of any kind of exemption with great wariness, and are extremely concerned for the implications of broad exemptions without knowing the exact universe being exempted, and the environmental impacts of those exemptions. We further believe that any exemption based on the impact on receiving waters would set too high an environmental damage threshold, and would pose too difficult a test on the permitting agencies.

Therefore, if exemptions are to be made for storm water, we urge Congress to proceed with extreme caution, and clearly define the dischargers, or types of discharges, to be exempted. Opportunity must be provided for EPA to require permits, and for any person to petition the Administrator to require permits, where a discharge is of significant concern. We also recommend that Congress explore the feasibility of designating certain of these discharges as non-point sources as a means to further facilitate their management.

10-YEAR PERMITS

We appreciate the committee's efforts to address our previous concerns about 10-year permits (Sec. 27), and hope that the two-tier system adopted by the Committee is workable, although we have some concerns in this regard. We urge that 10-year permits, if retained in final language, be modified whenever EPA issues new standards under Sections 301, 302, 304, 307(b) 403 and 405 of the Act.

WASTEWATER TREATMENT CONSTRUCTION GRANTS FORMULA

The Committee has shown wisdom in preserving the existing distribution formula for the construction grants program. Proposals in

the other body to shift the formula to emphasize future construction would set back our efforts to address existing water quality problems. In addition, the current formula more closely meets the 1984 EPA needs survey than does the proposal in the other body. We believe that the committee should work aggressively on the floor and in conference to maintain the existing, highly successful formula.

We believe the above are important elements of water quality improvement, and should be included in this year's Clean Water Act reauthorization. We commend the Committee on producing a strong environmental bill, and will be glad to work with the Committee in any capacity to add these final, but important, provisions.

JAMES L. OBERSTAR.

BOB EDGAR.

E. TOWNS.

CHET ATKINS.

SUPPLEMENTAL VIEWS OF CONGRESSMAN JIM MOODY

With one single exception, described below, I associate myself with and endorse the supplemental views of Mr. Oberstar, Mr. Edgar, and Mr. Towns. Like them, I want to say that under the leadership of Chairmen Howard and Roe, and Ranking Members Snyder and Stangeland, the Committee has produced a strong clean water bill that deserves favorable consideration and passage by the House.

The only disagreement I have with the remarks of Mr. Oberstar, *et al*, is the paragraph called "Anti-backsliding." Specifically I differ with their remarks opposing the reallocation—by sale, purchase, or trading—of wasteload allocations. I strongly dispute that such practices *necessarily* lower water quality. For example, if a certain water basin or river section is at a water pollution maximum under an existing allocation, and a new factory with a more effective treatment technology could replace an older factory using a less effective treatment process only if it could buy out its wasteload allocation, then prohibiting that sale or trade under an "anti-backsliding" restriction would actually keep water pollution higher than it would be.

If the only reason for buying or trading wasteload allocations were to evade compliance with existing standards, I, indeed, would oppose it. But that is not the only possibility. Trading and conveying pollution "rights" under an overall pollution level occurs now in the Fox River valley in Wisconsin, with very favorable results.

Total inflexibility in wasteload trading would have the effect in many areas of blocking *any new industry or expanding existing plants*. Suppose a new plant could be opened only if: (1) it can achieve zero discharge; (2) the allowable wasteload is increased; or (3) the allowable wasteload is reallocated, "traded," or sold. Option #1 is naturally impossible. Option #2 is backsliding pure and simple—just what we are trying to prevent. Only the third approach—reallocation—would both permit economic efficiency as well as full consistency with the intent of the Clean Water Act.

How would such trades or reallocations be accomplished where no plant goes out of existence? One way would be to assess each existing plant for a portion of its allocation which, added up, would accommodate the new plant. For the existing plants to reduce their discharge so that a new plant can come in, they are going to have to spend some of their own resources to improve their discharge quality. Why shouldn't they be compensated for these expenses? Who would be hurt by such a sale or trade? No one, so long as the total allocation were to remain unchanged. But many would be benefited economically.

I believe this trade or swap scenario will, and should, occur with increasing frequency. We should prepare for it by not erecting pro-

hibitions that appear to protect the environment but which, by freezing technology, may actually injure it.

JIM MOODY.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

FEDERAL WATER POLLUTION CONTROL ACT

TITLE I—RESEARCH AND RELATED PROGRAMS

DECLARATION OF GOALS AND POLICY

SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) * * *

* * * * *

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; **[and]**

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans **[.]**; and

(7) it is the national policy that plans for the control of non-point sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.

* * * * *

RESEARCH, INVESTIGATIONS, TRAINING AND INFORMATION

SEC. 104. (a) * * *

* * * * *

(h)(1) The Administrator is authorized to enter into contracts with, or make grants to, public or private agencies and organizations and individuals for (A) the purpose of developing and demonstrating new or improved methods for the prevention, removal, reduction, and elimination of pollution in lakes, including the undesirable effects of nutrients and vegetation, and (B) the construction of publicly owned research facilities for such purpose.

(2) *The Administrator shall submit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate not later than one year after the date of the enactment of this paragraph a lake restoration guidance manual establishing procedures to guide future State and local efforts to improve water quality in lakes.*

(q)(1) * * *

(4) *Notwithstanding section 205(d) of this Act, from amounts that are set aside for a fiscal year under section 205(i) of this Act and are not obligated by the end of the 24-month period of availability for such amounts under section 205(d), the Administrator shall make available \$1,000,000 or such unobligated amount, whichever is less, to support a national clearinghouse within the Environmental Protection Agency to collect and disseminate information on small flows of sewage and innovative or alternative wastewater treatment processes and techniques, consistent with paragraph (3). This paragraph shall apply with respect to amounts set aside under section 205(i) for which the 24-month period of availability referred to in the preceding sentence ends on or after September 30, 1985.*

(u) *There is authorized to be appropriated (1) not to exceed \$100,000,000 per fiscal year for the fiscal year ending June 30, 1973, the fiscal year ending June 30, 1974, and the fiscal year ending June 30, 1975, and not to exceed \$14,039,000 for the fiscal year ending September 30, 1980, and not to exceed \$20,697,000 for the fiscal year ending September 30, 1981, and not to exceed \$22,770,000 for the fiscal year ending September 30, 1982, and not to exceed \$23,770,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for carrying out the provisions of this section, other than subsection (g) (1) and (2), (p), (r), and (t), except that such authorizations are not for any research, development, or demonstration activity pursuant to such provisions; (2) not to exceed \$7,500,000 for fiscal years 1973, 1974, and 1975, \$2,000,000 for fiscal year 1977, \$3,000,000 for fiscal year 1978, \$3,000,000 for fiscal year 1979, \$3,000,00 for fiscal year 1980, \$3,000,000 for fiscal year 1981, [and \$3,000,000 for fiscal year 1982,] \$3,000,000 for fiscal year 1982, and \$3,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for carrying out the provisions of subsection (g)(1); (3) not to exceed \$2,500,000 for fiscal year 1973, 1974, and 1975, \$1,000,000 for fiscal year 1977, \$1,500,000 for fiscal year 1978, \$1,500,000 for fiscal year 1979, \$1,500,000 for fiscal year 1980, \$1,500,000 for fiscal year 1981, [and \$1,500,000 for fiscal year 1982,] \$1,500,000 for fiscal year 1982, and \$1,500,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985,*

September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, for carrying out the provisions of subsection (g)(2); (4) not to exceed \$10,000,000 for each of the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (p); (5) not to exceed \$15,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (r); and (6) not to exceed \$10,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, for carrying out the provisions of subsection (t).

* * * * *

GRANTS FOR POLLUTION CONTROL PROGRAMS

SEC. 106. (a) There are hereby authorized to be appropriated the following sums, to remain available until expended, to carry out the purposes of this section—

(1) \$60,000,000 for the fiscal year ending June 30, 1973; and

(2) \$75,000,000 for the fiscal year ending June 30, 1974 and the fiscal year ending June 30, 1975, \$100,000,000 per fiscal year for the fiscal year 1977, 1978, 1979, and 1980, \$75,000,000 per fiscal year for the fiscal years 1981 and 1982, and \$75,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990;

for grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution, including enforcement directly or through appropriate State law enforcement officers or agencies.

* * * * *

DEFINITIONS AND AUTHORIZATIONS

SEC. 112. (a) * * *

* * * * *

(c) There are authorized to be appropriated \$25,000,000 per fiscal year for the fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, \$6,000,000 for the fiscal year ending September 30, 1977, \$7,000,000 for the fiscal year ending September 30, 1978, \$7,000,000 for the fiscal year ending September 30, 1979, \$7,000,000 for the fiscal year ending September 30, 1980, \$7,000,000 for the fiscal year ending September 30, 1981, [and \$7,000,000 for the fiscal year ending September 30, 1982,] \$7,000,000 for the fiscal year ending September 30, 1982, and \$7,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, to carry out sections 109 through 112 of this Act.

* * * * *

TITLE II—GRANTS FOR CONSTRUCTION OF TREATMENT WORKS

PURPOSE

SEC. 201. (a) * * *

(g)(1) The Administrator is authorized to make grants to any State, municipality, or intermunicipal or interstate agency for the construction of publicly owned treatment works. On and after October 1, 1984, grants under this title shall be made only for projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, **[and]** infiltration-in-flow correction **[.]**, *and projects to address water quality problems due to impacts of discharges from combined stormwater and sanitary sewer overflows.* Notwithstanding the preceding **[sentence,]** *sentence*s, the Administrator may make grants on and after October 1, 1984, for (A) any project within the definition set forth in section 212(2) of this Act, other than for a project referred to in the preceding sentence, *and* (B) *any purpose for which a grant may be made under section 319(i) of this Act (including any innovative and alternative approaches for the control of nonpoint sources of pollution), except that not more than 20 per centum (as determined by the Governor of the State) of the amount allotted to a State under section 205 of this Act for any fiscal year shall be obligated in such State under authority of this sentence.*

(p) *TIME LIMIT ON RESOLVING CERTAIN DISPUTES.—In any case in which a dispute arises with respect to the awarding of a contract for construction of treatment works by a grantee of funds under this title and a party to such dispute files an appeal with the Administrator under this title for resolution of such dispute, the Administrator shall make a final decision on such appeal within 60 days of the filing of such appeal.*

FEDERAL SHARE

SEC. 202. (a)(1) The amount of any grant for treatment works made under this Act from funds authorized for any fiscal year beginning after June 30, 1971, and ending before October 1, 1984, shall be 75 per centum of the cost of construction thereof (as approved by the Administrator), and for any fiscal year beginning on or after October 1, 1984, shall be 55 per centum of the cost of construction thereof (as approved by the Administrator), unless modified to a lower percentage rate uniform throughout a State by the Governor of that State with the concurrence of the Administrator. Within ninety days after the enactment of this sentence the Administrator shall issue guidelines for concurrence in any such modification, which shall provide for the consideration of the unobligated balance of sums allocated to the State under section 205 of this Act, the need for assistance under this title in such State, and the availability of State grant assistance to replace the Federal share reduced by such modification. The payment of any such reduced Federal share shall not constitute an obligation on the part

of the United States or a claim on the part of any State or grantee to reimbursement for the portion of the Federal share reduced in any such State. Any grant (other than for reimbursement) made prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 from any funds authorized for any fiscal year beginning after June 30, 1971, shall, upon the request of the applicant, be increased to the applicable percentage under this sector. Notwithstanding the first sentence of this paragraph, in any case where a primary, secondary, or advanced waste treatment facility or its related interceptors or a project for infiltration-in-flow correction or a project to address water quality problems due to impacts of discharges from combined storm water and sanitary sewer overflows has received a grant for erection, building, acquisition, alteration, remodeling, improvement, extension, or correction before October 1, 1984, all segments and phases of such facility, interceptors, [and] project for infiltration-in-flow correction, and project to address such problems shall be eligible for grants at 75 per centum of the cost of construction thereof. Notwithstanding the first sentence of this paragraph, in the case of a project for which an application for a grant under this title has been made to the Administrator before October 1, 1984, and which project is under judicial injunction on such date prohibiting its construction, such project shall be eligible for grants at 75 percent of the cost of construction thereof.

* * * * *

(3) In addition to any grant made pursuant to paragraph (2) of this subsection, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of any facilities constructed with a grant made pursuant to paragraph (2) if the Administrator finds that such facilities have not met design performance specifications unless such failure is attributable to negligence on the part of any person and if such failure has significantly increased capital or operating and maintenance expenditures. In addition, the Administrator is authorized to make a grant to fund all of the costs of the modification or replacement of biodisc equipment (rotating biological contractors) in any publicly owned treatment works if the Administrator finds that such equipment has failed to meet design performance specifications, unless such failure is attributable to negligence on the part of any person, and if such failure has significantly increased capital or operating and maintenance expenditures.

* * * * *

PLANS, SPECIFICATIONS, ESTIMATES, AND PAYMENTS

SEC. 203. (a)(1) Each applicant for a grant shall submit to the Administrator for his approval, plans, specifications, and estimates for each proposal project for the construction of treatment works for which a grant is applied for under section 201(g)(1) from funds allotted to the State under section 205 and which otherwise meets the requirements of this Act. The Administrator shall act upon such plans, specifications, and estimates as soon as practicable after the same have been submitted, and his approval of any such

plans, specifications, and estimates shall be deemed a contractual obligation of the United States for the payment of its proportional contribution to such project.

(2)(A) *Before taking final action on any plans, specification, and estimates submitted under this subsection, the Administrator shall enter into a written agreement with the applicant which establishes and specifies which items of the proposed project are eligible for Federal payments under this section. The Administrator may not later modify such eligibility determinations unless they are found to have been made in violation of applicable Federal statutes and regulations.*

(B) *Eligibility determinations under this paragraph shall not preclude the Administrator from auditing a project pursuant to section 501 of this Act, or other authority, or from withholding or recovering Federal funds for costs which are found to be unreasonable, unsupported by adequate documentation, or otherwise unallowable under applicable Federal cost principles, or which are incurred on a project which fails to meet the design specifications or effluent limitations contained in the grant agreement and permit pursuant to section 402 of this Act for such project.*

(3) *The approval of construction plans and specifications by the Administrator under this section shall not include a determination or approval of the treatment work's unit processes, or the configuration of the treatment work's unit processes, which constitute the treatment technology. The Administrator shall not approve plans, specifications, and estimates for a project under this section unless the applicant certifies that the proposed unit processes and treatment technology are capable of meeting the effluent limitations for which such process and technology are designed.*

(4) *In the case of a treatment works that has an estimated total cost of \$8,000,000 or less (as determined by the Administrator), and the population of the applicant municipality is twenty-five thousand or less (according to the most recent United States census), upon completion of an approved facility plan, a single grant may be awarded for the combined Federal share of the cost of preparing construction plans and specifications, and the building and erection of the treatment works.*

* * * * *

(f) **TURNKEY CONTRACTS.—**

(1) **GENERAL AUTHORITY FOR LOW COST PROJECTS.—***After completion of an approved facility plan for construction of a treatment works which has an estimated total cost of \$8,000,000 or less (as determined by the Administrator), the applicant proposing to construct such treatment works may, in lieu of proceeding under the other provisions of this section, enter into an agreement with the Administrator under this subsection for the preparation of construction plans and specifications and the building and erection of such treatment works.*

(2) **REQUIRED TERMS AND CONDITIONS.—***All agreement entered into under this subsection shall—*

(A) *set forth an amount agreed to by the Administrator and the applicant as the maximum Federal contribution to the project, based upon a determination of the federally eli-*

gible costs of the project at the applicable Federal share under section 202 of this Act;

(B) set forth a date for completion of construction of the treatment works by the applicant and a schedule of payments by the Administrator of the Federal contribution to the project;

(C) contain such assurances by the applicant as the Administrator may require that (i) the proposed treatment works will be an operable unit and will meet all the requirements of this title (except as otherwise provided in paragraph (3) of this subsection), and (ii) not later than one year after the date specified as the date for completion of construction of the treatment works, the treatment works will be operating so as to meet the requirements of any applicable permit for such treatment works under section 402 of this Act;

(D) require the applicant and any agent or contractor of the applicant to provide a bond in an amount determined necessary by the Administrator to protect the Federal interest in the project; and

(E) contain such other terms and conditions as the Administrator deems necessary to ensure compliance with this title (except as provided in paragraph (3) of this subsection).

(3) **NONAPPLICABILITY OF CERTAIN STATUTORY REQUIREMENTS.**—Section 201(g)(3), 203 (other than this subsection and except with respect to the development and approval of a facility plan), 204(a)(5), 204(a)(6), and 204(d)(1) shall not apply to grants made pursuant to this subsection.

(4) **INTEREST-BEARING ACCOUNTS.**—

(A) **DEPOSIT OF FEDERAL CONTRIBUTION.**—Upon entering into an agreement under this subsection, the Administrator shall deposit, from amounts allotted to the State for such fiscal year under section 205 of this Act, the amount of the Federal contribution to the project agreed upon by the Administrator and the applicant into an interest-bearing account. Such amount shall be available only for making payments to the grantee in accordance with the schedule contained in the agreement.

(B) **LIMITATION ON USE OF EARNED INTEREST.**—Interest earned on amounts in the account under subparagraph (A) shall be available for payments to the grantee. Such payments shall be made solely for the purpose of reducing the net interest costs incurred by the grantee on obligations issued by the grantee for construction of such treatment works. The amount of such payments shall be in addition to the Federal share of the project other wise allowable. The amount of any such interest earned which exceeds the amount of such interest costs incurred shall be deposited in the general fund of the Treasury after the final audit of the project.

(5) **ADMINISTRATIVE PROVISIONS.**—

(A) **RESERVATION UNTIL FINAL AUDIT.**—The Administrator shall reserve a portion of the amount in the account under paragraph (4)(A) until the final audit of the project.

(B) **REALLOTMENT OF ANY EXCESS.**—If the amount deposited into the account by the Administrator under paragraph (4)(A) exceeds the cost of preparing construction plans and specifications and the building and erection of the treatment works, the Administrator shall reallocate the amount of the excess to the State in which such treatment works is located for the fiscal year in which such audit is completed.

(6) **PER STATE LIMITATIONS.**—The Administrator shall not obligate more than 20 percent of the amount allotted to a State for a fiscal year under section 205 of this Act for grants pursuant to this subsection.

(7) **LIMITATION ON FEDERAL CONTRIBUTION.**—In no event shall the Federal contribution for the cost of preparing construction plans and specifications and the building and erection of treatment works pursuant to this subsection exceed the amount agreed upon under paragraph (2), plus interest paid to the grantee under paragraph (4)(B).

(8) **NONCOMPLIANCE WITH AGREEMENT.**—In any case in which the recipient of a grant made pursuant to this subsection does not comply with the terms of the agreement entered into under paragraph (2), the Administrator is authorized to take such action as may be necessary to recover the amount of the Federal contribution to the project.

(9) **LIMITATION ON ELIGIBILITY OF RECIPIENTS OF TURNKEY GRANTS.**—A recipient of a grant made pursuant to this subsection shall not be eligible for any other grants under this title.

LIMITATIONS AND CONDITIONS

SEC. 204. (a) Before approving grants for any project for any treatment works under section 201(g)(1) the Administrator shall determine—

[(1) that such works are included in any applicable areawide waste treatment management plan developed under section 208 of this Act;]

(1) that any required areawide waste treatment management plan under section 208 of this Act (A) is being implemented for such area and the proposed treatment works are included in such plan, or (B) is being developed for such area and reasonable progress is being made toward its implementation and the proposed treatment works will be included in such plan;

[(2) that such works are in conformity with any applicable State plan under section 303(e) of this Act;]

(2) that (A) the State in which the project is to be located (i) is implementing any required plan under section 303(e) of this Act and the proposed treatment works are in conformity with such plan, or (ii) is developing such a plan and the proposed treatment works will be in conformity with such plan, and (B) such State is in compliance with section 305(b) of this Act;

* * * * *

(b)(1) Notwithstanding any other provision of this title, the Administrator shall not approve any grant for any treatment works under section 201(g)(1) after March 1, 1973, unless he shall first

have determined that the applicant (A) has adopted or will adopt a system of charges to assure that each recipient of waste treatment services within the applicant's jurisdiction, as determined by the Administrator, will pay its proportionate share (except as otherwise provided in this paragraph) of the costs of operation and maintenance (including replacement) of any waste treatment services provided by the applicant; (B) has legal, institutional, managerial, and financial capability to insure adequate construction, operation, and maintenance of treatment works throughout the applicant's jurisdiction, as determined by the Administrator. In any case where an applicant which, as of the date of enactment of this sentence, uses a system of dedicated ad valorem taxes and the Administrator determines that the applicant has a system of charges which results in the distribution of operation and maintenance costs for treatment works within the applicant's jurisdiction, to each user class, in proportion to the contribution to the total cost of operation and maintenance of such works by each user class (taking into account total waste water loading of such works, the constituent elements of the waste, and other appropriate factors), and such applicant is otherwise in compliance with clause (A) of this paragraph with respect to each industrial user, then such dedicated ad valorem tax system shall be deemed to be the user charge system meeting the requirements of clause (A) of this paragraph for the residential user class and such small non-residential user classes as defined by the Administrator. In defining small non-residential users, the Administrator shall consider the volume of wastes discharged into the treatment works by such users and the constituent elements of such wastes as well as such other factors as he deems appropriate. *A system of user charges which imposes a lower charge for low-income residential users (as defined by the Administrator) shall be deemed to be a user charge system meeting the requirements of clause (A) of this paragraph if the Administrator determines that such system was adopted after public notice and hearing.*

* * * * *

ALLOTMENT

SEC. 205. (a) * * *

* * * * *

(c)(1) * * *

"(2) Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1982, 1983, 1984, and 1985 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of enactment of the Municipal Wastewater Treatment Construction Grant Amendments of 1981. *Sums authorized to be appropriated pursuant to section 207 for the fiscal years 1986, 1987, 1988, 1989, and 1990 shall be allotted for each such year by the Administrator not later than the tenth day which begins after the date of the enactment of the Water Quality Renewal Act of 1985.* Notwithstanding any other provision of law, sums authorized for the fiscal year ending September 30, 1982, shall be allotted in accordance with table 3 of Committee Print Numbered 95-30 of the Committee on Public Works and Transport-

tation of the House of Representatives. Sums authorized for the fiscal years ending September 30, 1983, September 30, 1984, [and September 30, 1985,] *September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990*, shall be allotted in accordance with the following table:

* * * * *

(e) For the fiscal years 1978, 1979 1980, 1981, 1982, 1983, 1984 [and 1985], *1985, 1986, 1987, 1988, 1989, and 1990*, no State shall receive less than one-half of 1 per centum of the total allotment under subsection (c) of this section, except that in the case of Guam, Virgin Islands, American Samoa, *the Commonwealth of the Northern Mariana Islands*, and the Trust Territories not more than [thirty-three one hundredths of 1 per centum] *two-thirds of one percent* in the aggregate shall be allotted to all [four] *five* of these jurisdictions. For the purpose of carrying out this subsection there are authorized to be appropriated, subject to such amounts as are provided in appropriation Acts, not to exceed \$75,000,000 for each of fiscal years 1978, 1979, 1980, 1981, 1982, 1983, 1984, [and 1985] *1985, 1986, 1987, 1988, 1989, and 1990*. If for any fiscal year the amount appropriated under authority of this subsection is less than the amount necessary to carry out this subsection, the amount each State receives under this subsection for such year shall bear the same ratio to the amount such State would have received under this subsection in such year if the amount necessary to carry it out had been appropriated as the amount appropriated for such year bears to the amount necessary to carry out this subsection for such year.

* * * * *

(g)(1) The Administrator is authorized to reserve each fiscal year not to exceed 2 per centum authorized under section 207 of this title for purposes of the amount of the allotment made to each State under this section on or after October 1, 1977, except in the case of any fiscal year beginning on or after October 1, 1981, and ending before October 1, [1985,] *1990*, in which case the percentage authorized to be reserved shall not exceed 4 per centum [.] , or \$400,000 whichever amount is the greater. Sums so reserved shall be available for making grants to such State under paragraph (2) of this subsection for the same period as sums are available from such allotment under subsection (d) of this section, and any such grant shall be available for obligation only during such period. Any grant made from sums reserved under this subsection which has not been obligated by the end of the period for which available shall be added to the amount last allotted to such State under this section and shall be immediately available for obligation in the same manner and to the same extent as such last allotment. Sums authorized to be reserved by this paragraph shall be in addition to and not in lieu of any other funds which may be authorized to carry out this subsection.

* * * * *

(3) *The Administrator shall reserve each fiscal year beginning after September 30, 1985, \$900,000 from the sums available to the*

State of New York under this subsection for such fiscal year, \$900,000 from the sums available to the State of New Jersey under this subsection for such fiscal year, and \$200,000 from the sums available to the State of Connecticut under this subsection for such fiscal year. Sums reserved under this paragraph shall be used by the Administrator to make a grant for each such fiscal year to the Interstate Sanitation Commission established by such States by interstate compact to carry out the functions of such Commission under this Act.

(h) The Administrator shall set aside from funds authorized for each fiscal year beginning on or after October 1, 1978, **[four per centum]** a total (as determined by the Governor of the State) of not less than four percent nor more than seven and one-half percent of the sum allotted to any State with a rural population of 25 per centum or more of the total population of such State, as determined by the Bureau of the Census. The Administrator may set aside no more than **[four per centum]** seven and one-half percent of the sums allotted to any other State for which the Governor requests such action. Such sums shall be available only for alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less, or for the highly dispersed sections of larger municipalities, as defined by the Administrator.

(i) Not less than one-half of one per centum of funds allotted to a State for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, September 30, 1983, September 30, 1984, **[and September 30, 1985,]** *September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990*, under subsection (a) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works utilizing innovative processes and techniques pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the preceding sentence, a total of two per centum of the funds allotted to a State for each of the fiscal years ending September 30, 1979, and September 30, 1980, and 3 per centum of the funds allotted to a State for the fiscal year ending September 30, 1981, under subsection (a) of this section shall be expended only for increasing grants for construction of treatment works from 75 per centum to 85 per centum pursuant to section 202(a)(2) of this Act. Including the expenditures authorized by the first sentence of this subsection, a total (as determined by the Governor of the State) of not less than 4 per centum nor more than 7½ per centum of the funds allotted to such State for any fiscal year beginning after September 30, 1981, under subsection (c) of this section shall be expended only for increasing the Federal share of grants for construction of treatment works pursuant to section 202(a)(2) of this Act.

(j)(1) * * *

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(3) In carrying out planning with grants made under paragraph (2) of this subsection, a State shall develop jointly with local, regional, and interstate entities, a plan for carrying out the program and give funding priority to such entities and designated or undes-

ignated public comprehensive planning organizations to carry out the purposes of this subsection. *In giving such priority, the State shall allocate at least 50 percent of the amount granted to such State for a fiscal year under this subsection to regional and interstate public comprehensive planning organizations in such State, except in any fiscal year for which the Administrator, after consultation with the Governor of such State and such organizations, determines that allocation of at least 50 percent to such organizations will not substantially assist in achieving the goals of this Act.*

* * * * *

(1) *RESERVATION FOR INVESTIGATIONS AND AUDITS.—One-quarter of one percent of any amount appropriated under section 207 of this Act for any fiscal year beginning after September 30, 1985, shall be reserved by the Administrator for carrying out investigations and audits authorized by this Act of projects for which funds are made available under this title. Such sums shall be in addition to, and not in lieu of, any sums otherwise appropriated for or allocated to the Office of the Inspector General.*

* * * * *

AUTHORIZATION

SEC. 207. There is authorized to be appropriated to carry out this title, other than sections 206(e), 208 [and] 209, and 220 (except as provided in section 220(b)(1)(B)), for the fiscal year ending June 30, 1973, not exceed \$5,000,000,000, for the fiscal year ending June 30, 1974, not to exceed \$6,000,000,000, and for the fiscal year ending June 30, 1975, not to exceed \$7,000,000,000, and, subject to such amounts as are provided in appropriation Acts for the fiscal year ending September 30, 1977, \$1,000,000,000 for the fiscal year ending September 30, 1978, \$4,500,000,000 and for the fiscal years ending September 30, 1979, September 30, 1980, not to exceed \$5,000,000,000; for the fiscal year ending September 30, 1981, not to exceed \$2,548,837,000; and for the fiscal years ending September 30, 1982, September 30, 1983, September 30, 1984, [and September 30, 1985,] September 30, 1985, September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, not to exceed \$2,400,000,000 per fiscal year.

AREAWIDE WASTE TREATMENT MANAGEMENT

SEC. 208. (a) * * *

(f)(1) * * *

* * * * *

(3) Each applicant for a grant under this subsection shall submit to the Administrator for his approval each proposal for which a grant is applied for under this subsection. The Administrator shall act upon such proposal as soon as practicable after it has been submitted, and his approval of that proposal shall be deemed a contractual obligation of the United States for the payment of its contribution to such proposal, subject to such amounts as are provided

in appropriation Acts. There is authorized to be appropriated to carry out this subsection not to exceed \$50,000,000 for the fiscal year ending June 30, 1973, not to exceed \$100,000,000 for the fiscal year ending June 30, 1974, [and] not to exceed \$150,000,000 per fiscal year for the fiscal years ending June 30, 1975, September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, [and] not to exceed \$100,000,000 per fiscal year for the fiscal years ending September 30, 1981, and September 30, 1982, not to exceed \$100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and not to exceed \$50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.

* * *

(j)(1) * * *

* * *

(9) There are hereby authorized to be appropriated to the Secretary of Agriculture \$200,000,000 for fiscal year 1979, \$400,000,000 for fiscal year 1980, \$100,000,000 for fiscal year 1981, [and] \$100,000,000 for fiscal year 1982, \$100,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and \$50,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, to carry out this subsection. The program authorized under this subsection shall be in addition to, and not in substitution of, other programs in such area authorized by this or any other public law.

* * *

SEC. 220. GRANTS TO STATES FOR ESTABLISHMENT OF REVOLVING FUNDS.

(a) GENERAL AUTHORITY; AMOUNT OF GRANT.—

(1) **GENERAL AUTHORITY; CONSTRUCTION ASSISTANCE.**—Subject to the provisions of this section, the Administrator shall make grants to each State for the purpose of establishing a revolving fund for providing assistance to municipalities and intermunicipal and interstate agencies for construction of treatment works (as defined in section 212 of this Act) which are publicly owned.

(2) **AMOUNT OF GRANT.**—The amount of a grant to a State under this section for any fiscal year shall equal the amount allotted to such State under this section for such fiscal year.

(b) GENERAL GRANT REQUIREMENTS.—

(1) DEPOSITS INTO REVOLVING FUNDS.—

(A) **MANDATORY DEPOSITS.**—A grant shall not be made for a fiscal year to a State under this section unless the State has first deposited in the revolving fund established by the State under this section from non-Federal sources an amount equal to 20 percent of the amount allotted to the State under this section for such fiscal year.

(B) **DISCRETIONARY DEPOSITS.**—In addition to any amounts deposited in such revolving fund under subpara-

graph (A), the Governor of the State may deposit not to exceed 20 percent of the amount allotted to the State under section 205 of this Act for any fiscal year beginning after September 30, 1985, if the State has first deposited in such fund from non-Federal sources an amount equal to 20 percent of the amount to be deposited from such allotment.

(2) **ANNUAL CERTIFICATION.**—Each State shall submit to the Administrator annually a certification—

(A) that upon completion of any project for treatment works for which financial assistance is made available from the revolving fund established by such State under this section, discharges from such treatment works will meet all applicable requirements necessary to achieve applicable State and Federal water quality standards; and

(B) that such State will comply with all provisions of this section.

(c) **FORMS OF REVOLVING FUND ASSISTANCE.**—Assistance described in subsection (a)(1) for construction of treatment works may only be provided from a revolving fund established under subsection (d)(1) in the form of a loan, loan guarantee, payment to reduce interest on a loan, bond interest subsidy, bond guarantee, or purchase of insurance for obligations. In addition, to the extent provided by State law, the State may issue revenue or general obligation bonds to finance projects for construction of treatment works described in subsection (a)(1) and on the State's priority list under section 216 using amounts in such fund as a source of revenue or security for the payment of interest and principal on such bonds, if the proceeds of the sale of such bonds are deposited in such fund.

(d) **STATE WATER POLLUTION CONTROL REVOLVING FUNDS.**—

(1) **ESTABLISHMENT.**—

(A) **PURPOSES.**—Each State shall establish a Water Pollution Control Revolving Fund to provide assistance described in subsection (a)(1) for construction of treatment works.

(B) **STATE DEPOSITS.**—The State shall deposit in such revolving fund any Federal funds allotted to the State under this section, any amounts received by the State for repayment of loans made by the State with amounts in such fund, any amounts required or authorized to be deposited in such fund subsection (a)(1), and any additional funds (except for funds received under any other section of this title) which the State wishes to deposit in such fund.

(2) **ADMINISTRATIVE EXPENSES.**—The State may use amounts in such revolving fund for the payment of expenses of administration of such fund; except that, in any fiscal year in which the State receives a grant under this section, the State may not use more than four percent of the amount of such grant for the payment of such expenses in such fiscal year.

(3) **INVESTMENT.**—The State may invest any portion of the funds in such revolving fund which is not currently needed for providing assistance described in subsection (a)(1) and for payment of administrative expenses such paragraph (2).

(4) **LIMITATION TO PREVENT DOUBLE BENEFITS.**—If the State makes, from such revolving fund, a loan which will finance the

cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly owned treatment works, the State shall ensure that if the recipient of such loan receives a grant under section 201(g) of this Act for construction of such treatment works and an allowance under section 201(l)(1) for non-Federal funds expended for such planning and preparation, such recipient will promptly repay such loan to the extent of such allowance.

(5) **ELIGIBILITY OF NON-FEDERAL PORTION OF CONSTRUCTION GRANT PROJECTS.**—The State may provide assistance from such revolving fund to an municipality or intermunicipal or interstate agency with respect to the non-Federal share of the costs of a project for which such municipality or agency is receiving assistance from the Administrator under any other section of this title.

(6) **DEDICATED SOURCE OF REVENUE FOR LOAN REPAYMENT.**—The State may only make a loan from such revolving fund to a municipality or inter-municipal or interstate agency if such municipality or agency first establishes a dedicated source of revenue for the repayment of such loan.

(7) **PRIORITY LIST REQUIREMENT.**—The State may provide financial assistance from such revolving fund only with respect to a project for construction of a treatment works described in subsection (a)(1) if such project is on the State's priority list under section 216 of this Act. Such assistance may be provided regardless of the rank of such project on such list.

(e) **ADMINISTRATIVE PROVISIONS.**—

(1) **STATE REPORTS.**—Each State shall annually make a full and complete report to the Administrator concerning the use of funds deposited in the revolving fund established by such State under this section in such manner as the Administrator shall prescribe.

(2) **ANNUAL AUDITS.**—The Administrator shall, at least on an annual basis, conduct or require each State to have independently conducted reviews and audits as may be deemed necessary or appropriate by the Administrator to carry out the objectives of this section. Audits of the use of funds deposited in the revolving fund established by such State shall be conducted in accordance with the auditing procedures of the General Accounting Office.

(f) **APPLICABILITY OF OTHER PROVISIONS.**—Except to the extent provided in this section, the other provisions of this title shall not apply to grants under this section.

(g) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this section not to exceed \$600,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990, not to exceed \$2,400,000,000 for the fiscal year ending September 30, 1991, not to exceed \$1,800,000,000 for the fiscal year ending September 30, 1992, not to exceed \$1,200,000,000 for the fiscal year ending September 30, 1993, and not to exceed \$600,000,000 for the fiscal year ending September 30, 1994.

(h) **ALLOTMENT OF FUNDS.**—

(1) *SAME FORMULA AS CONSTRUCTION GRANT ALLOTMENT.*—Sums authorized to be appropriated to carry out this section for any fiscal year shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which are authorized to be appropriated under section 207 of this Act are allotted for such fiscal year.

(2) *EXCEPTION.*—For any fiscal year for which sums are authorized to be appropriated to carry out this section and for which sums are not authorized to be appropriated to carry out section 207, the sums authorized to be appropriated to carry out this section shall be allotted by the Administrator in the same manner and in accordance with the same table as the funds which were authorized to be appropriated under section 207 were allotted for the most recent fiscal year for which there was such an authorization under section 207.

(3) *REALLOTMENT.*—

(A) *EXPIRATION OF PERIOD OF AVAILABILITY.*—Sums allotted to a State under this subsection for a fiscal year shall remain available for a grant to such State for the fiscal year for which authorized and for the following two fiscal years. Any funds remaining after the last day of such third fiscal year shall be reallocated among the other States.

(B) *UNUTILIZED FUNDS.*—Any funds granted to a State for a fiscal year under this section which are not utilized by such State for providing assistance described in subsection (a)(1) for construction of treatment works during such fiscal year and the following two fiscal years shall be repaid to the Administrator for reallocation among the other States.

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

SEC. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1)(A) * * *

* * * * *

(2)(A) * * *

* * * * *

[(C) not later than July 1, 1984 with respect to all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;]

(C) for all toxic pollutants referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later

than three years and six months after the date such limitations are established.

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph [not later than three years after the date such limitations are established]; *as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established*

[(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a)(4) of this Act require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b)(4) of this Act; and]

(E) for all pollutants identified pursuant to section 304(a)(4) of this Act compliance with effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which shall require application of the best conventional pollutant control technology, as determined in accordance with regulations issued by the Administrator pursuant to section 304(a)(4) of this Act, as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established;

[(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph no later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.]

(F) for all pollutants (other than those subject to subparagraph (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph as expeditiously as possible, but in no case later than three years and six months after the date such limitations are established.

* * * * *

(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b)(2)(A) of this section by the replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction

with an innovative system that has the potential for significantly lower costs than the systems which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b)(2)(A) of this section no later than **[July 1, 1987,]** *two years after the date for compliance with such effluent limitation which would otherwise be applicable under such subsection*, if it is also determined that such innovative system has the potential for industrywide application.

* * * * *

(n) VARIANCES.—

(1) FUNDAMENTALLY DIFFERENT FACTORS.—Upon application of any person who provides (or does not have a reasonable opportunity to provide) information to the Administrator in the rulemaking to establish or revise any effluent limitation under this section or section 304 of this Act, the Administrator may grant a variance from the application of such limitation with respect to the discharge of any pollutant by such person if the Administrator determines that factors relating to the facilities, equipment, and processes of such person are fundamentally different than the factors considered in such rulemaking.

(2) TIME LIMIT FOR APPLICATIONS.—An application for a variance from the application of an effluent limitation under this subsection must be filed with the Administrator within 180 days after the date on which such limitation is established or revised, as the case may be.

(3) TIME LIMIT FOR DECISION.—The Administrator, to the maximum extent practicable, shall approve or deny any application filed under this subsection within 180 days after the date such application is filed with the Administrator.

(4) LIMITATION ON APPLICABILITY.—This subsection shall only apply with respect to effluent limitations established or revised after the date of the enactment of this subsection.

(5) EFFECT OF DENIAL OF APPLICATION.—If an application for a variance from the application of an effluent limitation under this subsection is denied by the Administrator, the applicant must comply with such limitation as established or revised, as the case may be.

* * * * *

INFORMATION AND GUIDELINES

SEC. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body

of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters. *In developing, publishing, and revising criteria under this paragraph after the date of the enactment of this sentence, the Administrator shall consider, among other things, the effects on the ecosystem of (i) water hardness, (ii) pH, (iii) chemical and physical interactions, (iv) persistence of pollutants and the long-term effects of pollutants, (v) sedimentation from chemical reaction of pollutants, (vi) the absorptive properties of sediments, (vii) resuspension, and (viii) bio-uptake. New or revised criteria under this paragraph should be established so as to provide an ample margin of safety to protect human health and fish and wildlife resources. Whenever, in developing new or revised criteria under this paragraph with respect to a pollutant, the Administrator determines that a wellfounded and significant difference of opinion exists as to the latest scientific and research knowledge on the matters referred to in the preceding sentence, the Administrator shall publish a description of such difference of opinion along with the publication of such criteria.*

* * * * *

(h) The Administrator shall [, within one hundred and eighty days from the date of enactment of this title,] , *within ninety days from the date of the enactment of the Water Quality Renewal Act of 1985, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act.*

* * * * *

(k)(1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 and 319 of this Act.

* * * * *

(3) There is authorized to be appropriated to carry out the provisions of this subsection, \$100,000,000 per fiscal year for the fiscal years 1979 through [1983.] 1985 and \$50,000,000 per fiscal year for the fiscal years 1986 through 1990.

(1) **INDIVIDUAL CONTROL STRATEGIES FOR TOXIC POLLUTANTS.**—

(1) **STATE LIST OF NAVIGABLE WATERS.**—*Not later than one year after the date of the enactment of this subsection, each State shall submit to the Administrator for review, approval, and implementation under this subsection—*

(A) *a list of all navigable waters in such State for which the State does not expect the applicable standard under sec-*

tion 303 of the Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a);

(B) for each segment of the navigable waters included on such list, a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source; and

(C) for each such segment, an individual control strategy which the State determines will produce a reduction in the discharge of toxic pollutants from point sources identified by the State under this paragraph through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

(2) **APPROVAL OR DISAPPROVAL.**—Not later than 120 days after the last day of the one-year period referred to in paragraph (1), the Administrator shall approve or disapprove the control strategies submitted under paragraph (1) by any State.

(3) **ADMINISTRATOR'S LIST OF NAVIGABLE WATERS.**—If a State fails to submit control strategies in accordance with paragraph (1) or the Administrator does not approve the control strategies submitted by such State in accordance with paragraph (1), then, not later than one year after the last day of the period referred to in paragraph (2), the Administrator, in cooperation with such State and after notice and opportunity for public comment, shall publish in the Federal Register a list of all navigable waters in such State for which the Administrator does not expect the applicable standard under section 303 of this Act will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a). For each segment of the navigable waters included on such list, the Administrator shall determine the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source. At a minimum, the Administrator shall consider for listing under this subsection any navigable waters for which any person submits a petition to the Administrator for listing not later than 120 days after such last day.

(4) **ADMINISTRATOR'S DEVELOPMENT AND PUBLICATION.**—Not later than one year after the date of publication of the list required by paragraph (3) of this subsection, the Administrator, in cooperation with the States, shall issue proposed regulations setting forth, for each segment of the navigable waters listed under paragraph (3), an individual control strategy. Each individual control strategy shall produce a reduction in the dis-

charge of toxic pollutants from point sources identified by the Administrator under paragraph (3) through the establishment of effluent limitations under section 302 of this Act and water quality standards under section 303(c)(4)(B) of this Act, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of promulgation of the final strategy. Not later than 180 days after issuing the proposed regulations, the Administrator shall promulgate each individual control strategy as a final regulation.

(5) **IMPLEMENTATION.**—The Administrator shall implement each individual control strategy established or promulgated under this subsection by modifying or requiring the modification of permits under section 402 of this Act.

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TOXIC AND PRETREATMENT EFFLUENT STANDARDS

SEC. 307. (a)(1) * * *

* * * * *

(e) **COMPLIANCE DATE EXTENSION FOR INNOVATIVE PRETREATMENT SYSTEMS.**—In the case of any new or existing facility that proposes to comply with the pretreatment standards of subsection (b) of this section by applying an innovative system that meets the requirements of section 301(k) of this Act, the owner or operator of the publicly owned treatment works receiving the treated effluent from such facility may extend the date for compliance with the applicable pretreatment standard established under this section for a period not to exceed two years—

(1) if the Administrator determines that the innovative system has the potential for industrywide application, and

(2) if the Administrator (or the State, in any case in which the State has a pretreatment program approved by the Administrator)—

(A) determines that the proposed extension will not cause the publicly owned treatment works to be in violation of its permit under section 402, and

(B) concurs with the proposed extension.

* * * * *

FEDERAL ENFORCEMENT

SEC. 309. (a)(1) * * *

* * * * *

[(c)(1) any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State, shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one

year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

[(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than six months, or by both.

[(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.]

(c) CRIMINAL PENALTIES.—

(1) NEGLIGENT VIOLATIONS.—Any person who—

(A) negligently violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

(B) negligently introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works under section 402 of this Act by the Administrator or a State;

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment of not more than two years, or by both.

(2) KNOWING VIOLATIONS.—Any person who—

(A) knowingly violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or any requirement imposed in a pretreatment program approved under section 402(b)(8) of this Act or in a permit issued under section 404 of this Act by the Secretary of the Army, acting through the Chief of Engineers, or by a State; or

(B) knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to

cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in a permit issued to the treatment works under section 402 of this Act by the Administrator or a State; shall be punished by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$100,000 per day of violation, or by imprisonment of not more than four years, or by both.

(3) **COMPLIANCE AS AFFIRMATIVE DEFENSE.**—It shall be an affirmative defense under paragraphs (1)(B) and (2)(B) of this subsection that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable Federal, State, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

(4) **FALSE STATEMENTS.**—Any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than four years, or by both.

(5) **RESPONSIBLE CORPORATE OFFICER AS "PERSON".**—For the purpose of this subsection, the term "person" means, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(6) **HAZARDOUS SUBSTANCE DEFINED.**—For the purpose of this subsection, the term "hazardous substance" means (A) any substance designated pursuant to section 311(b)(2)(A) of this Act, (B) any element, compound, mixture, solution, or substance designated pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of this Act, and (E) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act.

(d) Any person who violates section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this

Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed **[\$10,000]** \$25,000 per day of such violation.

* * * * *

(g) ADMINISTRATIVE PENALTIES.—

(1) IN GENERAL.—*Whenever on the basis of any information available to him or her—*

(A) the Administrator finds that any person is in violation of section 301 (except as it relates to section 404 of this Act), 302, 306, 307, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator or by a State, or

(B) the Secretary of the Army, acting through the Chief of Engineers (hereinafter in this subsection referred to as the "Secretary") finds that any person is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 404 of this Act by the Secretary or by a State,

the Administrator or Secretary, as the case may be, may, after consultation with the State in which the violation occurs, assess a civil penalty of not more than \$10,000 per day of violation, except that such penalty shall not exceed a total of \$125,000.

(2) ADMINISTRATIVE REQUIREMENTS.—

(A) NOTICE AND OPPORTUNITY FOR HEARING.—*A civil penalty shall be assessed under this subsection by the Administrator or Secretary, as the case may be, by an order made on the record after opportunity (provided in accordance with this subparagraph) for a hearing in accordance with section 554 of title 5, United States Code. Before issuing such an order, the Administrator or Secretary, as the case may be, shall—*

(i) give written notice to the person to be assessed a civil penalty under such order of the Administrator's or Secretary's proposal to issue such order and provide such person an opportunity to request, within 15 days of the date the notice is received by such person, such a hearing on the order; and

(ii) provide public notice of and reasonable opportunity to comment on any proposed assessment.

(B) NOTICE TO INTERESTED PERSONS.—*Any person who comments on a proposed assessment shall be given notice of any hearing held under subparagraph (A) and any order assessing a penalty under this subsection. In any such hearing, such person shall have a reasonable opportunity to present evidence.*

(C) RIGHTS OF INTERESTED PERSONS TO A HEARING.—*If no hearing is held before the issuance of an order assessing a penalty under this subsection, any person who commented on the proposed assessment may petition the Administrator or Secretary, as the case may be, to set aside such order and*

to provide a hearing on the penalty. The Administrator or Secretary shall set aside such order and provide such hearing in accordance with subparagraph (A) if the Administrator or Secretary determines that the evidence presented by the petitioner in support of the petition is material and was not considered in the issuance of the order. If the Administrator or Secretary denies a hearing under this subparagraph, the Administrator or Secretary shall provide to the petitioner, and publish in the Federal Register, notice of the reasons for such denial.

(D) **FACTORS TO CONSIDER IN DETERMINING AMOUNT OF PENALTY.**—In determining the amount of a civil penalty, the Administrator or Secretary, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, economic savings (if any) resulting from the violation, and such other matters as justice may require.

(E) **COMPROMISE OF AMOUNT.**—The Administrator or Secretary, as the case may be, may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(F) **FINALITY OF ORDER.**—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (3) or a hearing is requested under subparagraph (C). If such a hearing is denied, such order shall become final 30 days after such denial.

(3) **RIGHT OF INTERESTED PERSON TO APPEAL.**—Any person who requested in accordance with paragraph (2)(A) or (2)(C) a hearing respecting the assessment of a civil penalty and who is aggrieved by an order assessing a civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

(4) **RECOVERY OF UNPAID PENALTIES BY ATTORNEY GENERAL.**—If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and if such person does not file a petition for judicial review of the order in accordance with paragraph (3), or

(B) after a court in an action brought under paragraph (3) has entered a final judgment in favor of the Administrator or Secretary, as the case may be,
the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 30-day period referred to in paragraph (3) or the date

of such final judgment, as the case may be) in an action brought in any appropriate district court of the United States. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(5) *SUBPOENAS*.—The Administrator or Secretary, as the case may be, shall have the authority to issue subpoenas in connection with hearings under paragraph (2) of this subsection and may request the Attorney General to bring an action to enforce any subpoena under this subsection. The district courts shall have jurisdiction to enforce such subpoenas and impose sanctions.

(6) *EFFECT ON AUTHORITY OF ADMINISTRATOR*.—Action taken by the Administrator or Secretary, as the case may be, pursuant to this subsection shall not affect or limit the Administrator's or Secretary's authorized to enforce any provision of this Act, except that any violation with respect to which a civil penalty is imposed under this subsection shall not be subject to a civil penalty under section 309(d) or section 311(b) of this Act.

(7) *EFFECT OF STATE ENFORCEMENT ACTION*.—When a State has proceeded with an enforcement action relating to a violation with respect to which the Administrator or Secretary is authorized to assess a civil penalty under this subsection, the Administrator or Secretary, as the case may be, are not authorized to take any action under this subsection if the State demonstrates that the State imposed penalty is appropriate.

(8) *EFFECT OF ADMINISTRATOR'S ACTION ON COMPLIANCE*.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act or with the terms and conditions of any permit issued pursuant to section 402 or 404 of this Act.

* * * * *

OIL AND HAZARDOUS SUBSTANCE LIABILITY

SEC. 311. (a) * * *

(1) * * *

* * * * *

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, [the Canal Zone,] the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

* * * * *

CLEAN LAKES

SEC. 314. (a) Each State shall prepare or establish, and submit to the Administrator for his approval—

(1) an identification and classification according to eutrophic condition of all publicly owned [fresh water] lakes in such State;

(2) procedures, processes, and methods (including land use requirements), to control sources of pollution of such lakes; and

(3) methods and procedures, in conjunction with appropriate Federal agencies, to restore the quality of such lakes.

(b) The Administrator shall provide financial assistance to States in order to carry out methods and procedures approved by him under *subsection (a)* of this section. The Administrator shall provide financial assistance, to States to prepare the identification and classification surveys required in *subsection (a)(1)* of this section.

(c)(1) The amount granted to any State for any fiscal year under *subsection (b)* of this section shall not exceed 70 per centum of the funds expended by such State in such year for carrying out approved methods and procedures under *subsection (a)* of this section.

(2) There is authorized to be appropriated \$50,000,000 for the fiscal year ending June 30, 1973; \$100,000,000 for the fiscal year 1974; \$150,000,000 for the fiscal year 1975, \$50,000,000 for fiscal year 1977, \$60,000,000 for fiscal year 1978, \$60,000,000 for fiscal year 1979, \$60,000,000 for fiscal year 1980, \$30,000,000 for fiscal year 1981, [and \$30,000,000 for fiscal year 1982] \$30,000,000 for fiscal year 1982, and \$30,000,000 per fiscal year for each of the fiscal years 1983, 1984, 1985, 1986, 1987, 1988, 1989, and 1990 for grants to States under *subsection (b)* of this section which such sums shall remain available until expended. The Administrator shall provide for an equitable distribution of such sums to the States with approved methods and procedures under *subsection (a)* of this section.

(d) **PRIORITY PROJECTS FOR CONTROL OF NONPOINT SOURCES.—**

(1) **GRANT PROGRAM.—**The Administrator shall make grants to States for priority projects for control of nonpoint sources of pollution which are contributing to the degradation of water quality in lakes. The Administrator shall provide an equitable distribution of such sums to the States.

(2) **FEDERAL SHARE.—**The amount granted to a State for a project under this subsection shall not exceed 70 per centum of the cost of such project.

(3) **AUTHORIZATION OF APPROPRIATIONS.—**There is authorized to be appropriated to carry out this subsection not to exceed \$50,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990. Sums appropriated shall remain available until expended.

(e) **ANNUAL WATER QUALITY REPORT.—**The Administrator shall submit annually to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the status and trend of water quality in lakes in the United States, including but not limited to, the nature and extent of pollution loading from point and non-point sources and the extent to which the use of lakes is impaired as a result of such pollution with respect to toxic pollution.

* * * * *

SEC. 319. NONPOINT SOURCE CONTROL PROGRAMS.

(a) **STATE ASSESSMENT REPORTS.—**

(1) **CONTENTS.—**The Governor of each State shall prepare and submit to the Administrator for his approval, a report which—

(A) identifies those portions of the navigable waters within the State which, as a result (in whole or in part) of pollution from nonpoint sources, are not meeting applicable water quality standards or the goals and requirements of this Act;

(B) identifies those categories and subcategories of nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;

(C) identifies and describes State and local programs for controlling pollution added from non-point sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsection (i); and

(D) describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category or subcategory.

(2) **INFORMATION USED IN PREPARATION.**—Each report submitted under paragraph (1) shall be based on available information including, but not limited to, information available under sections 208, 303(e), 304(f), and 305(b) of this Act, and may include all or part of any water quality management program approved under section 208 or 303 of this Act.

(b) STATE PLANS.—

(1) **IN GENERAL.**—The Governor of each State shall prepare and submit to the Administrator for his approval—

(A) a plan which such State proposes to implement in the first four fiscal years beginning after the date of submission of such plan for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters; and

(B) a report which (i) identifies each department, agency, or instrumentality of the United States and each department, agency, or instrumentality of the State which is likely to be engaging in, supporting, or providing financial assistance in each of such fiscal years for any activity or program in the State which, if carried out, would be inconsistent with implementation of such plan in such fiscal years, and (ii) recommends to the Administrator methods by which such Federal department, agency, or instrumentality could modify administration of such activity or program, and describes methods by which such State department, agency, or instrumentality intends to modify administration of such activity or program, so that such activity or program is consistent with, and assists the State in implementation of, such plan.

(2) *SPECIFIC CONTENTS.*—Each plan proposed for implementation under this subsection shall specify—

(A) from among those portions of navigable waters significantly affected by pollution added from nonpoint sources, each portion and land area contributing such pollution with respect to which the State plan to assist, encourage, or require implementation of best management practices and measures in the first four fiscal years beginning after the date of submission of such plan;

(B) the order in which, and the schedule under which, the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years;

(C) from among those categories and subcategories of nonpoint sources of pollution which contribute to each portion specified under subparagraph (A) not meeting applicable water quality standards or the goals and requirements of this Act, the categories and subcategories with respect to which the State plans to assist, encourage, or require implementation of such practices and measures in such fiscal years and the relative contribution of such pollution by category and subcategory of such sources;

(D) the best management practices and measures the implementation of which the State plans to assist, encourage, or require in each of such fiscal years to reduce pollution resulting from nonpoint sources and to improve water quality;

(E) the methods (including, but not limited to, demonstration, enforcement, technical assistance, education, training, and cost-sharing programs), by category and subcategory of such sources of pollution, which the State plans to use to encourage, assist, or require implementation of such practices and measures in such fiscal years; and

(F) sources of Federal and other assistance (other than assistance provided under subsection (i)) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.

(3) *CERTIFICATION OF LEGAL AUTHORITY.*—Each plan submitted by a State under this subsection shall be accompanied by a certification of the attorney general of the State or the chief attorney of any State water pollution control agency which has independent legal counsel that the laws of the State provide adequate authority to implement such plan or, if there is not such adequate authority, a list of such additional authority which will be necessary to implement such plan.

(4) *IMPLEMENTATION SCHEDULE.*—The schedule required by paragraph (2)(B) shall establish for each category and subcategory of nonpoint sources of pollution specified under paragraph (2)(C) an expeditious time period for implementation of best management practices and measures specified under paragraph (2)(D) and shall indicate the estimated dates for implementation of such practices and measures.

(5) **UTILIZATION OF LOCAL AND PRIVATE EXPERTS.**—In developing and implementing a plan under this subsection, a State shall, to the maximum extent practicable, utilize local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.

(6) **DEVELOPMENT ON WATERSHED BASIS.**—A State shall, to the maximum extent practicable, develop and implement a plan under this subsection on a watershed-by-watershed basis.

(c) **ADMINISTRATIVE PROVISIONS.**—

(1) **COOPERATION REQUIREMENT.**—Any report required by subsection (a) and any plan and report required by subsection (b) shall be developed in cooperation with local, regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 208, have worked jointly with the State on water quality management planning under section 205(j), or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

(2) **TIME PERIOD FOR SUBMISSION OF REPORTS AND PLANS.**—Each report and plan shall be submitted to the Administrator during the 270-day period beginning on the date of the enactment of this section; except that upon request of the Governor, the Administrator shall extend such period for not to exceed an additional 270 days.

(3) **FAILURE OF STATE TO SUBMIT REPORT.**—If a Governor of a State does not submit the report required by subsection (a) during such period, the Administrator shall prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a).

(d) **CONSOLIDATION OF RECOMMENDATIONS FOR UNITED STATES AGENCIES.**—The Administrator shall consolidate recommendations for modifications of activities and programs submitted by the States under subsection (b)(1)(B) and submit such consolidated recommendations to the appropriate departments, agencies, and instrumentalities of the United States. Each such department, agency, or instrumentality, to the maximum extent practicable and consistent with existing law, shall accommodate such recommendations and shall carry out its own activities and programs in a manner which is consistent with, and will assist implementation of, the plan submitted by the State under subsection (b) and approved by the Administrator under this section.

(e) **APPROVAL OR DISAPPROVAL OF REPORTS AND PLANS.**—

(1) **DEADLINE.**—Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or plan under this section (other than subsections (i) and (j)), the Administrator shall either approve or disapprove such report or plan, as the case may be. The Administrator may approve a portion of a plan under this subsection. If the Administrator does not disapprove a report, plan, or portion of a plan in such 180-day period, such report, plan, or portion shall be deemed approved for purposes of this section.

(2) **PROCEDURE FOR DISAPPROVAL.**—If, after notice and opportunity for public comment and consultation with appropriate

Federal and State agencies and other interested persons, the Administrator determines that a plan submitted under subsection (b) or any portion thereof is not likely to satisfy, in whole or in part, the goals and requirements of this Act, that adequate authority does not exist, or adequate resources are not available, to implement such plan or portion, that the schedule for implementing such plan or portion is not sufficiently expeditious, or that the practices and measures proposed in such plan or portion are not adequate to improve the quality of navigable waters in the State and to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources, the Administrator shall disapprove the plan or portion thereof with respect to which the Administrator makes such determination. The Administrator shall notify the State of such disapproval and request specific revisions of such plan or portion necessary to obtain approval of such plan or portion. Not later than 90 days after the date of such notification, the State shall submit to the Administrator for his approval under this subsection its revisions of such plan or portion.

(f) **LOCAL PLANS; TECHNICAL ASSISTANCE.**—If a State fails to submit a plan under subsection (b) or the Administrator does not approve such a plan, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a plan which is described in subsection (b) and meets the requirements of subsection (e). After development of such plan, such agency or organization shall submit such plan to the Administrator for his approval. If the Administrator approves such plan, such agency or organization shall be eligible to receive financial assistance under subsection (i) for implementation of such plan as if such agency or organization were a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (i).

(g) **TECHNICAL ASSISTANCE FOR STATES.**—Upon request of a State, the Administrator may provide technical assistance to such State in developing a plan under subsection (b) for those portions of the navigable waters requested by such State.

(h) **INTERSTATE MANAGEMENT CONFERENCE.**—

(1) **CONVENING OF CONFERENCE; NOTIFICATION; PURPOSE.**—If any portion of the navigable waters in any State which is implementing a plan approved under this section is not meeting applicable water quality standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute pollution resulting from nonpoint sources to such portion. If, on the basis of information available to him, the Administrator determines that a State is not meeting applicable water quality

standards or the goals and requirements of this Act as a result, in whole or part, of pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion.

(2) **STATE PLAN REQUIREMENT.**—Each State which contributes significant pollution from nonpoint sources to the portion of navigable waters in amounts which contribute to such portion not meeting applicable water quality standards or the goals and requirements of this Act shall submit to the Administrator for his approval a plan referred to in subsection (b) to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the quality of such portion; except that if such State has an approved plan under subsection (b), such State shall revise such plan to reduce the level of pollution in such portion resulting from nonpoint sources in such State and to improve the water quality of such portion and submit such revised plan to the Administrator for his approval under this section. Such plan or revised plan shall be consistent with existing Federal and State law. After approval, the State shall implement such plan or revised plan.

(i) **GRANT PROGRAM.**—

(1) **GRANTS FOR IMPLEMENTATION OF PLANS.**—Upon application of a State for which a report submitted under subsection (a) and a plan submitted under subsection (b) is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting the State in implementing such plan.

(2) **APPLICATIONS.**—An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices, and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.

(3) **FEDERAL SHARE.**—

(A) **IN GENERAL.**—The Federal share of the cost of each plan implemented with Federal assistance under this subsection in any fiscal year shall not exceed 50 percent of the cost incurred by the State in implementing such plan.

(B) **EXCEPTION.**—The Federal share of those costs of any such plan which are attributable to a watershed area with respect to which the Administrator determines that a significant number of non-Federal, non-State interests of such area are willing and able to enter into agreements to participate in such year in nonpoint source pollution control measures under such plan shall be not less than 50 percent and not more than 60 percent of such cost.

(C) **LIMITATION ON ADMINISTRATIVE COSTS.**—For purposes of this paragraph, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing enforcement and regulatory activities, education, training, technical assistance, demonstration projects and technology transfer programs shall not be subject to this limitation.

(4) **MAINTENANCE OF EFFORT.**—No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding the date of enactment of this subsection.

(5) **REPORTING AND REQUIREMENTS.**—

(A) **REPORT.**—Each State which receives a grant under this subsection in any fiscal year shall submit to the Administrator a written report which describes the activities and programs carried out in the State under such grant and the progress made by such State in meeting the schedule specified under subsection (b)(2)(B).

(B) **SATISFACTORY PROGRESS.**—No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2)(B).

(6) **LIMITATION ON GRANT AMOUNTS.**—Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.

(7) **PRIORITY FOR EFFECTIVE REGULATORY MECHANISMS.**—For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to any State which has included effective regulatory mechanisms in an approved State plan under this section and has implemented such mechanisms in the preceding fiscal year. Such mechanisms shall include, but are not limited to, deadlines for implementation of best management practices and enforcement procedures to ensure implementation of such plan.

(8) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to carry out this subsection not to exceed \$150,000,000 per fiscal year for the fiscal years ending Septem-

ber 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, September 30, 1990. Sums appropriated to carry out this subsection shall remain available until expended.

(j) **REPORTS OF ADMINISTRATOR.**—

(1) **ANNUAL REPORTS.**—Not later than January 1, 1986, and each January 1 thereafter the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and Committee on Environment and Public Works of the Senate report for the preceding fiscal year on the activities and programs implemented under this section and the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

(2) **FINAL REPORT.**—Not later than January 1, 1989, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall include—

(A) an analysis of the effectiveness of plans carried out under this section and of the best management practices and measures utilized under those plans in controlling nonpoint sources of pollution;

(B) an analysis of the level of State participation in implementing such plans; and

(C) recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources.

(k) **SET ASIDE FOR ADMINISTRATIVE PERSONNEL.**—Not less than 5 percent of the funds appropriated to carry out subsection (i) for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

TITLE IV—PERMITS AND LICENSES

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NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) * * *

* * * * *

(b) At any time after the promulgation of the guidelines required by subsection (h)(2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall approve each such submitted

program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

[(B) are for fixed terms not exceeding five years; and]

(B) are for fixed terms not exceeding five years, or for a fixed term not exceeding ten years in any case in which the State determines (in accordance with guidelines established by the Administrator) that the applicant has consistently complied with any permit held by such applicant under this section and that—

(i) pollutants described in subparagraphs (C), (D), and (F) of section 301(b)(2) are not detectable in the effluent to which the permit will apply; or

(ii) such pollutants are present in such effluent only in trace amounts and are neither causing nor are likely to cause toxic effects, alone or in combination with pollutants from other sources;

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(iii) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(D) in the case of any permit issued for a fixed term exceeding five years, must be modified promptly to ensure compliance with any new or revised effluent limitation under section 307(a) of this Act or any new or revised requirement pursuant to a standard under section 303 of this Act which limitation or requirement is more stringent than the existing effluent limitation or requirement in the permit or which controls a pollutant not controlled in the permit; and

[(D)] (E) control the disposal of pollutants into wells;

* * * * *

(c)(1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those **[navigable waters]** discharges subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(i)(2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

* * * * *

(4) A State may return administration of its permit program to the Administrator, and the Administrator may withdraw approval of a State program under paragraph (3) of this subsection—

(A) in the case of any approval under subsection (n)(3), the entire program being administered by the State department or agency at the time of such return or withdrawal, as the case may be; or

(B) in the case of any approval under subsection (n)(4), any phased component of the permit program approved at the time of such return or withdrawal, as the case may be.

* * * * *

(i)(1) The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

(2) The Administrator shall not require a permit under this section, nor shall the Administrator directly or indirectly require any State to require such a permit, for discharges of stormwater runoff from mining operations or oil or gas exploration, production, processing, or treatment operations, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated with process wastes, overburden, raw materials, toxic pollutants above natural background levels, spilled product, hazardous substances, or oil or grease. Any person discharging stormwater runoff described in the preceding sentence shall monitor the quality of water in such flows and shall report not less often than annually to the Administrator on the results of such monitoring.

(m) **ADDITIONAL PRETREATMENT OF CONVENTIONAL POLLUTANTS NOT REQUIRED.**—To the extent a treatment works (as defined in section 212 of this Act) which is publicly owned is not meeting the requirements of a permit issued under this section for such treatment works as a result of inadequate design or operation of such treatment works, the Administrator, in issuing a permit under this section, shall not require pretreatment by a person introducing conventional pollutants identified pursuant to section 304(a)(4) of this Act into such treatment works other than pretreatment required to assure compliance with pretreatment standards under subsection (b)(8) of this section and section 307(b)(1) of this Act. Nothing in this subsection shall affect the Administrator's authority under sections 307 and 309 of this Act, affect State and local authority under sections 307(b)(4) and 510 of this Act, relieve such treatment works of its obligations to meet requirements established under this Act, or otherwise preclude such works from pursuing whatever feasible options are available to meet its responsibility to comply with its permit under this section.

(n) **PARTIAL PERMIT PROGRAM.**—

(1) **STATE SUBMISSION.**—The Governor of a State may submit under subsection (b) of this section a permit program for a portion of the discharges into the navigable waters in such State.

(2) **MINIMUM COVERAGE.**—A partial permit program under this subsection shall cover at a minimum administration of a

major category of the discharges into the navigable waters of the State or a major component of the permit program required by subsection (b).

(3) **APPROVAL OF PARTIAL PERMIT PROGRAM.**—The Administrator may approve a partial permit program covering administration of a major category of discharges under this subsection if—

(A) such program represents a complete permit program and covers all of the discharges under the jurisdiction of a department or agency of the State; and

(B) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b).

(4) **APPROVAL OF PARTIAL AND PHASED PERMIT PROGRAM.**—The Administrator may approve under this subsection a partial and phased permit program covering administration of a major component (including discharge categories) of a State permit program required by subsection (b) if—

(A) the Administrator determines that the partial program represents a significant and identifiable part of the State program required by subsection (b); and

(B) the State submits, and the Administrator approves, a plan for the State to assume administration by phases of the remainder of the State program required by subsection (b) by a specified date not more than five years after submission of the partial program under this subsection and agrees to make all reasonable efforts to assume such administration by such date.

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TITLE V—GENERAL PROVISIONS

ADMINISTRATION

SEC. 501. (a) * * *

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(d) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access, for the purpose of audit and examination, to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act. *For the purpose of carrying out audits and examinations with respect to recipients of Federal assistance under this Act, the Administrator is authorized to enter into noncompetitive procurement contracts with State audit organizations. Such contracts may only be entered into to the extent and in such amounts as may be provided in advance in appropriation Acts.*

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GENERAL DEFINITIONS

SEC. 502. Except as otherwise specifically provided, when used in this Act:

(1) * * *

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(3) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, The Virgin Islands, Guam, American Samoa, *the Commonwealth of the Northern Mariana Islands*, and the Trust Territory of the Pacific Islands.

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(14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include *agricultural stormwater discharges* and return flows from irrigated agriculture.

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CITIZEN SUITS

SEC. 505. (a) * * *

(b) No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right[.], or

(C) if the Administrator or State has commenced and is diligently pursuing the assessment of a civil penalty under section 309(g) of this Act.

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ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 509. (a)(1) * * *

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(b)(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 306, (B) in making any determination pursuant to section 306(b)(1)(C), (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 307, (D) in making any determination as to a State permit program submitted under section 402(b), (E) in approving or promulgating any effluent limitation or other limitation under sections 301, 302, or 306 [and] (F) in issuing or denying any permit under section 402, and (G) in promulgating any individual control strategy under section 304(l), may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such busi-

ness upon application by such person. Any such application shall be made within ninety days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such ninetieth day.

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REPORTS TO CONGRESS

SEC. 516. (a) * * *

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(f) *DAM DISCHARGE STUDY.*—The Administrator, in cooperation with interested States and Federal agencies, shall study and monitor the effects on the quality of navigable waters attributable to the impoundment and discharge of water by dams. The results of such study, together with any recommendations for the control of such impoundment and discharge, shall be submitted to Congress not later than December 31, 1986.

(g) *STATE REVOLVING FUND REPORT.*—

(1) *IN GENERAL.*—Not later than February 10, 1990, the Administrator shall submit to Congress a report on the financial status and operations of Water Pollution Control Revolving Funds established by the States under section 220 of this Act. The Administrator shall prepare such report in cooperation with the States, including water pollution control agencies and other water pollution control planning and financing agencies.

(2) *CONTENTS.*—The report under this subsection shall also include the following:

(A) an inventory of the facilities that are in significant noncompliance with the enforceable requirements of this Act;

(B) an estimate of the cost of construction necessary to bring such facilities into compliance with such requirements;

(C) an assessment of the availability of sources of funds for financing such needed construction, including an estimate of the amount of funds available for providing assistance for such construction through September 30, 1999, from the Water Pollution Control Revolving Funds established by the States under section 220 of this Act;

(D) an assessment of the operations, loan portfolio, and loan conditions of such Funds;

(E) an assessment of the effect on user charges of the assistance provided by such Funds compared to the assistance provided with funds appropriated pursuant to section 207 of this Act; and

(F) an assessment of the efficiency of the operation and maintenance of treatment works constructed with assistance provided by such Funds compared to the efficiency of the operation and maintenance of treatment works constructed with assistance provided under section 201 of this Act.

GENERAL AUTHORIZATION

SEC. 517. There are authorized to be appropriated to carry out this Act, other than sections 104, 105, 106(a), 107, 108, 112, 113, 114, 115, 206, 207, 208 (f) and (h), 209, 304, 311 (c), (d) (i), (l) and (k), 314, 315, and 317, \$250,000,000 for the fiscal year ending June 30, 1973, \$300,000,000 for the fiscal year ending June 30, 1974, \$350,000,000 for the fiscal year ending June 30, 1975, \$100,000,000 for the fiscal year ending September 30, 1977, \$150,000,000 for the fiscal year ending September 30, 1978, \$150,000,000 for the fiscal year ending September 30, 1979, \$150,000,000 for the fiscal year ending September 30, 1980, \$150,000,000 for the fiscal year ending September 30, 1981, [and \$161,000,000 for the fiscal year ending September 30, 1982] *\$161,000,000 for the fiscal year ending September 30, 1982, \$160,000,000 per fiscal year for each of the fiscal years ending September 30, 1983, September 30, 1984, and September 30, 1985, and \$110,000,000 per fiscal year for each of the fiscal years ending September 30, 1986, September 30, 1987, September 30, 1988, September 30, 1989, and September 30, 1990.*

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